

Exhibit 32

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CASE NO. 1:11-cv-1428-CKK-MG-ESH

STATE OF FLORIDA,

Plaintiff,

vs.

UNITED STATES OF AMERICA and
ERIC H. HOLDER, JR., in his official
capacity as Attorney General,
Defendants.

FLORIDA STATE CONFERENCE OF THE
NAACP, et al,
Defendant-Intervenors,

KENNETH SULLIVAN, et al
Defendant-Intervenors,

NATIONAL COUNCIL OF LA RAZA, and
LEAGUE OF WOMEN VOTERS OF
FLORIDA,
Defendant-Intervenors.

_____ /

DEPOSITION OF BUCKY MITCHELL

TAKEN in the above-styled cause, at the offices of the
United States Attorney, for the Northern District of Florida,
111 N. Adams Street, 4th floor, US Courthouse, Tallahassee,
Florida, on the 27th day of February, 2012, commencing at 9:00
a.m.

LISA C. SNYDER, COURT REPORTER

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A P P E A R A N C E S

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Also present: Harry O. Thomas, Esq.

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E X H I B I T S

- Mitchell Exhibit No. 1 - Privilege log
- Mitchell Exhibit No. 2 - 1-25-11 email (Enwright)
- Mitchell Exhibit No. 3 - 1-26-11 email (Pepper)
- Mitchell Exhibit No. 4 - 1-26-11 email (Pepper)
- Mitchell Exhibit No. 5 - 2-3-11 email (Pepper)
- Mitchell Exhibit No. 6 - 2-9-11 email (Enwright)
- Mitchell Exhibit No. 7 - 5-13-11 email (Fox/Roberts)
- Mitchell Exhibit No. 8 - 5-13-11 email (Fogt/Fox)
- Mitchell Exhibit No. 9 - conversation notes 2-10-11
- Mitchell Exhibit No. 10- 4-1-11 email (watkins)
- Mitchell Exhibit No. 11- FSASE document 4-6-11
- Mitchell Exhibit No. 12- typed comments re: Ex.11
- Mitchell Exhibit No. 13- SOE concerns/response
- Mitchell Exhibit No. 14- 4-12-11 email (Kirkland, et al)
- Mitchell Exhibit No. 15- 4-20-11 email (Kirkland)
- DOS Exhibit No. 68 - 4-9-11 email (Kirkland)
- SOE Exhibit No. 29 - 4-12-11 email (Charlotte County SOE)
- SOE Exhibit No. 11 - 4-13-11 email (Edwards)
- SOE Exhibit No. 71 - 4-13-11 email (Fox)
- Mitchell Exhibit No. 16- notes re 4-14-11 hearing
- DOS Exhibit No. 72 - 4-14-11 email (Fox)
- SOE Exhibit No. 1 - FSASE document
- Mitchell Exhibit No. 17- handwritten notes
- Mitchell Exhibit No. 18- 4-25-11 email (Edwards)
- SOE Exhibit No. 21 - Matthews email
- DOS Exhibit No. 28 - DOE opinion
- DOS Exhibit No. 39 - DOS memo 12-24-07
- DOS Exhibit No. 75 - 4-29-11 email (Fox)

1 The witness, BUCKY MITCHELL after having been duly sworn
2 was examined and testified as follows:

3
4 EXAMINATION BY MR. O'CONNOR:

5 Q. Mr. Mitchell, I introduced myself off the record, but
6 I'd like to now introduce myself on the record. My name is Dan
7 O'Connor. I am an attorney with the law firm of Bryan Cave, in
8 Washington, DC. We represent the League of Women Voters of
9 Florida, and the National Counsel of La Raza, in connection
10 with a preclearance case that's pending in the US District
11 Court, for the District of Columbia.

12 would you please state and spell your full name
13 for the record?

14 A. Emmett Mitchell, IV, E-m-m-e-t-t, M-i-t-c-h-e-l-l,
15 IV. Nickname is Bucky, B-u-c-k-y.

16 MR. O'CONNOR: Thank you. I would like to have the
17 counsel here today identify themselves for the record.

18 MS. MEZA: Catherine Meza, with the US Department of
19 Justice.

20 MR. NORDBY: Daniel Nordby, representing the State of
21 Florida and Ken Detzner.

22 MR. THOMAS: Harry Thomas, Radey, Thomas, Yon &
23 Clark, representing the witness.

24 MR. O'CONNOR: Thank you.

25 Q. Mr. Mitchell, is it your understanding you are here

1 testifying under oath just as you would if you were in a court
2 of law?

3 A. Yes.

4 Q. Have you been deposed before?

5 A. I have. It's been several years.

6 Q. What were the circumstances just briefly of that
7 prior deposition?

8 A. On a preclearance case for the Department of State
9 elections bill.

10 Q. What were the issues just briefly that were in that
11 preclearance case?

12 A. I don't recall. It's been probably over 10 years.

13 Q. At that time, were you employed by the Department of
14 State?

15 A. I was.

16 Q. Other than that deposition, approximately 10 years
17 ago, have you had your deposition taken at any other times?

18 A. No.

19 Q. Since it's been a little while since you have had
20 your deposition taken, I would like to go over a few of the
21 basic ground rules. First, we have the court reporter here.
22 Her job today is to transcribe everything that is being said,
23 and as a result it's difficult for her to get head nods or
24 other non-verbal communications, which while very natural, is
25 difficult for the court reporter, so I would like to ask you to

1 respond verbally to my questions, and I will do the same to the
2 extent necessary for our communication. Does that sound fair?

3 A. That's fine.

4 Q. If at any point during the deposition today if I ask
5 something that isn't clear, or if you would like further
6 clarification, please just ask and I will be happy to give you
7 clarification. Is it fair, then, that if you answer a question
8 I can assume you have understood it?

9 A. Yes.

10 Q. Is there any reason that you can't testify today
11 truthfully and honestly?

12 A. No.

13 Q. Is today as good a day as any to take your
14 deposition?

15 A. Yes.

16 Q. What did you do to prepare for today's deposition?

17 A. Conferred with counsel for a few minutes, reviewed
18 the documents that I provided to you.

19 Q. When you say conferred with counsel, who is the
20 counsel you conferred with?

21 A. Harry Thomas.

22 Q. When did that meeting occur?

23 A. This morning.

24 Q. Did you speak with anyone else about the deposition?

25 A. I talked to Dan Nordby to find out how long the

1 deposition would take place.

2 Q. Did you discuss anything else with Mr. Nordby?

3 A. No.

4 Q. Other than Mr. Thomas and Mr. Nordby, did you speak
5 to anyone else about the deposition?

6 A. I spoke briefly to Chris Lunny, another attorney in
7 Harry Thomas' office.

8 Q. I'm sorry. The name was Chris?

9 A. Lunny.

10 Q. Can you spell the last name?

11 A. L-u-n-n-y.

12 Q. When did that conversation occur?

13 A. Friday.

14 Q. About how long did it last?

15 A. 30 minutes.

16 Q. Just generally what was the topic of the
17 conversation?

18 A. Just the documents that I provided to you, we briefly
19 discussed those.

20 Q. You said you reviewed documents you produced, are
21 those the documents that were produced to Bryan Cave in
22 response to a third party document subpoena?

23 A. Yes.

24 Q. Did you review any other documents?

25 A. No.

1 Q. Throughout the deposition today we will probably use
2 a fair number of terms that I imagine we probably have a
3 similar understanding of. I just want to confirm for the
4 record. One of the terms is HB1355, or House Bill 1355; are
5 you familiar with that term?

6 A. Yes.

7 Q. Can you describe what it means to you?

8 A. It's the numerical designation for the House election
9 bill that was passed back in 2011.

10 Q. Is it your understanding that House Bill 1355 is the
11 piece of election legislation that contains the four sets of
12 voting changes that are at issue in the preclearance case?

13 A. Yes.

14 Q. Are you aware of whether House Bill 1355 had a
15 companion bill in the Senate?

16 A. I believe it did.

17 Q. Do you recall the number of that bill?

18 A. Actually, I don't.

19 Q. Does Senate Bill 2086 sound familiar?

20 A. That does. That sounds familiar.

21 Q. I will represent to you that Senate Bill 2086 is the
22 companion to House Bill 1355 during the 2011 legislative
23 session, with regard to election law changes.

24 Through the deposition, to the extent we refer
25 to House Bill 1355, will you understand that to mean both the

1 House Bill and the Senate Bill, as they were ultimately passed
2 by the legislature, and signed by the Governor?

3 A. Yes.

4 Q. If there is ever any confusion, or if you would like
5 to draw any distinctions between the two bills, please feel
6 free to do so, and I would love to drill down to that level of
7 detail as needed.

8 A. Okay.

9 Q. I made reference a moment go to four sets of voting
10 changes that are at issue in the preclearance case. Do you
11 have an understanding as to which of the voting changes those
12 are?

13 A. I believe I do.

14 Q. Can you briefly describe them for me?

15 A. There is a provision on constitutional amendment
16 provisions. Provisions on early voting. Provisions on change
17 of address at the polls. And, provisions on third party voter
18 registration.

19 Q. Sounds like your memory is pretty good. Those are
20 the four sets of changes as I understand them as well.

21 Throughout the deposition today, to the extent I
22 refer to the four sets of voting changes, will you understand
23 that to mean the four sets of voting changes you just outlined?

24 A. Yes.

25 Q. I would like to ask you briefly about the document

1 subpoena that you received, and that you responded to. I guess
2 first, is it correct that you received a subpoena for documents
3 from our office?

4 A. Yes.

5 Q. Did you respond to that subpoena?

6 A. I did.

7 Q. Did you produce all documents that were in your
8 possession, custody, or control that are responsive to that
9 subpoena?

10 A. Yes.

11 Q. Since you produced the documents, have you located
12 any additional documents that are responsive but haven't yet
13 been produced?

14 A. No.

15 Q. Did you withhold any documents from your production?

16 A. There were some documents that we identified as
17 privileged, that we felt were responsive, but other than that
18 no.

19 Q. I would like to show you a document that we will mark
20 as Mitchell Exhibit 1.

21 Mr. Mitchell, do you recognize the document
22 that's marked Mitchell Exhibit 1?

23 A. Yes.

24 Q. What is it?

25 A. It's a privileged log that I created.

1 Q. Is this a privileged log that details the documents
2 that you withheld from production pursuant to the subpoena on
3 the basis of privilege?

4 A. Yes.

5 Q. I'd like to ask you a few questions about this just
6 to understand what documents haven't been produced, and then
7 jump into the substance about the documents that have been
8 produced. There are four entries on the privileged log; is
9 that right?

10 A. Yes.

11 Q. Does that reflect the fact that there are four
12 documents that you withheld from production?

13 A. That there were four? I'm sorry?

14 Q. Is this a complete list of the documents that were
15 withheld from production?

16 A. Yes.

17 Q. I would like to ask about the first entry, which for
18 the record lists a date of January 11, 2011, a document type of
19 email from Mr. Mitchell to Andy Palmer, Frank Terraferma, Joel
20 Springer, and Jim Rimes, with a cc to law firm, and the notes
21 read, "Email to clients with attached first draft of proposed
22 2011 election bill. Draft election bill attached to email",
23 and it asserts the privilege of attorney/client communication.
24 Did I read that correctly?

25 A. Yes.

1 Q. First I'd like to ask you to briefly identify the
2 individuals who are listed as the to on this priv-log.

3 A. Andy Palmer, at the time was the Executive Director
4 of the Republican Party of Florida.

5 Frank Terraferma, also employed with the Party,
6 as I believe Director of House Campaigns.

7 Joel Springer, also employed with the Party as
8 Director of Senate Campaigns.

9 And, Jim Rimes is a political consultant that we
10 also represent.

11 Q. With regard to these four individuals, is it your
12 position that you represent each of these four people?

13 A. Yes.

14 Q. In what capacity?

15 A. Legal consulting, political consulting, general legal
16 guidance with regard to legislative matters and campaign
17 related matters.

18 Q. You use the word we, that we represent these
19 individuals. Who are you referring to?

20 A. The Coates Law Firm.

21 Q. Who makes up the Coates Law Firm?

22 A. Myself, Richard Coates and Noreen Fenner.

23 Q. Are each of those individuals attorneys?

24 A. Richard is. Noreen is not.

25 Q. What is Ms. Fenner's position?

1 A. She is the office manager and legal assistant.

2 Q. So, the Coates Law Firm consists of yourself
3 Mr. Coates and Ms. Fenner, and you and Mr. Coates are
4 attorneys; is that right?

5 A. Correct.

6 Q. You mention Mr. Palmer, Mr. Terraferma and Mr.
7 Springer, all of who whom were associated with the Republican
8 Party of Florida; is that right?

9 A. Correct.

10 Q. You mentioned Mr. Rimes, who was a political
11 consultant; is he affiliated with the Republican Party of
12 Florida at all?

13 A. No, not to my knowledge.

14 Q. Can you help me understand just a little bit. It
15 sounds like you have at least two groups of clients that are
16 listed here; one that is connected with the Republican Party of
17 Florida, and another, Mr. Rimes, who is a political consultant
18 but not affiliated with RPOF. Can you help me understand the
19 dynamic there, why those two sets of groups would receive a
20 single email?

21 A. Jim is a political consultant that works for Enwright
22 Consulting, and we do work for him from time to time. He is
23 interested primarily in changes to Chapter 106 of the election
24 code.

25 Q. Chapter 106 of the election code, is it correct that

1 refers to campaign finance?

2 A. That's correct.

3 Q. With regard to the cc that's listed, law firm, can
4 you help me understand what that means?

5 A. Sure. I cc'd to Noreen and Richard Coates.

6 Q. You listed law firm as a proxy for Mr. Coates and Ms.
7 Fenner; is that right?

8 A. I did.

9 Q. Law firm is listed on three of the four entries; is
10 that the same two individuals in each instance?

11 A. It is.

12 Q. Why would you cc Ms. Fenner and Mr. Coates?

13 A. Just for information purposes at this point.

14 Q. I would like to ask you about the notes affiliated
15 with first entry. It references a first draft of proposed 2011
16 elections bill. Can you help me understand what that means?

17 A. Let's see, I am looking at the date here. I think
18 these were just notes that I had taken during the meeting with
19 clients as we were discussing potential election legislation.

20 Q. I want to make sure I am clear. I am referencing the
21 first line in the log which refers to email to clients with
22 attached first draft, and then you mentioned notes to a
23 meeting.

24 A. I am sorry. I had jumped to item number two.

25 Q. Let's go back up to number one. In the notes with

1 regard to the first item, there is a reference to email to
2 clients with attached first draft. Can you help me understand
3 what that references?

4 A. It's just an email with probably just a greeting,
5 with an attached election bill that I had drafted. I don't
6 know what else to add to that.

7 Q. If there is no substance in the email, what was the
8 basis for withholding it from production?

9 A. Well, it had an attached election bill that I
10 drafted.

11 Q. Is it your position that that attachment potentially
12 had privileged information attached to it?

13 A. Yes.

14 Q. To your understanding, is the cover email, does that
15 contain any privileged information?

16 A. I don't recall. I don't recall if it does or not.

17 Q. Okay. If it doesn't, we would like to request that
18 you produce at least the cover email so we can see the date and
19 have a copy of the email; would you have an objection to that?

20 A. I don't think so. I would like to see it first.

21 Q. Okay. With regard to the attachment, why would that
22 attachment have been withheld?

23 A. I think it's a document that I have produced, really
24 on my own, but that I am sharing with clients and asking for
25 their feedback, and didn't feel like it needed to be produced.

1 Q. Okay. With regard to Mr. Rimes, as opposed to
2 Mr. Palmer, Mr. Terraferma and Mr. Springer, those are two
3 separate clients; is that right?

4 A. Repeat your question.

5 Q. It sounds like there were four people that received
6 this email; three of whom are associated with the Republican
7 Party of Florida, one of whom is associated with Enwright
8 Consulting. I am trying to understand, is it correct that the
9 three who were associated with the Republican Party of Florida,
10 in your view, is one client group, and the fourth person,
11 Mr. Rimes, is affiliated with Enwright Consulting. Is that a
12 separate client group?

13 A. I think that would be fair to say, yes.

14 Q. Is there any relationship between those two groups?

15 A. No.

16 Q. Okay. One question I have then is, if you are
17 sending an email to two different client groups, who are
18 unrelated to each other and don't share any attorney/client
19 communication with each other, what is the basis for
20 withholding the document on the basis of privilege, if
21 confidentiality is being waived since it is being sent to two
22 different groups at the same time?

23 MR. THOMAS: Object to the form of the question.

24 A. I don't know. That was a decision I made sending the
25 document to two individuals that are clients. I don't know

1 what else to add.

2 BY MR. O'CONNOR:

3 Q. Based on our discussion going through it today, do
4 you feel that's a document you would be willing to produce to
5 us?

6 A. Again, I would like to see the cover page. I don't
7 know. I would like to go back and look at the draft.

8 Q. Okay. I appreciate that. If that's something you
9 would be willing to do, that would be greatly appreciated.

10 I would like to move to the second item on the
11 privileged log. References a date of January 28, 2011, and
12 references handwritten notes. I believe that you were starting
13 to talk about this one earlier. I would like to get more
14 information. Can you help me understand what this line item in
15 the privileged log references?

16 A. Given the timeframe, I believe the notes were simply
17 my notes that I had taken after meeting with Andy Palmer, Frank
18 and Joel, after they had an opportunity to look at the election
19 bill.

20 Q. With regard to the line item, it references a meeting
21 with clients but there is no one identified, although you just
22 listed three individuals, so help me understand who attended
23 this meeting.

24 A. Andy Palmer, Frank Terraferma, Joel Springer, and I
25 believe Mike Grissom. At the time I believe he was Deputy

1 Executive Director of the party.

2 Q. Where did the meeting take place?

3 A. At the party's office.

4 Q. When you reference the party, you are referring to
5 the Republican Party of Florida?

6 A. Correct.

7 Q. About how long did the meeting last?

8 A. Two hours.

9 Q. I don't want to get into the substance of the
10 communication to the extent it's privileged, but if you could
11 describe generally the topics that were discussed without
12 revealing the privilege, I would appreciate that.

13 A. I think we went through the bill and those
14 individuals at the meeting expressed any thoughts about drafts
15 that I had prepared relating to those provisions, and we
16 discussed them. I made notes, and if there were changes or
17 things we wanted to change in the draft, I would make a note of
18 that.

19 Q. Before we leave this document, I would like to run
20 through the last two items here. Number three is a February 4,
21 2011 email from yourself to Mr. Terraferma, cc law firm.

22 Under the notes it describes, "email notifying
23 recipients that I am working on a revised election bill and
24 waiting on feedback on some contents". Did I read that
25 correctly?

1 A. Yes.

2 Q. With regard to this line item, there is a reference
3 to a revised election bill. Is this the same election bill
4 that is referenced in the first line item, where there is a
5 first draft of proposed 2011 elections bill?

6 A. It is.

7 Q. There is a reference to waiting on feedback; whose
8 feedback were you waiting on?

9 A. I am trying to recall. I may have been waiting on
10 some feedback-- the email was to Frank Terraferma-- probably
11 feedback from Andy Palmer, Joel, and I guess potentially Jim
12 Rimes.

13 Q. Is it your understanding that this feedback was with
14 regard to specific provisions in that draft elections bill?

15 A. Yes.

16 Q. We have been talking about this draft elections bill.
17 Does that draft bill relate to House Bill 1355, which
18 ultimately passed out of the legislature?

19 A. Yes.

20 Q. Does it relate to the four sets of voting changes
21 that are at issue in the underlying case?

22 A. Uh, the reason I hesitate, I don't know if those four
23 sets were in that draft bill.

24 Q. Okay. We will go through that in more detail. So
25 it's your understanding this draft bill relates to the bill

1 that ultimately passed as House Bill 1355?

2 A. Yes.

3 Q. But that it's unclear at this point which of the
4 changes that are in that draft bill ultimately became the four
5 sets of changes from House Bill 1355?

6 A. Correct.

7 Q. Okay. I would like to ask you briefly about the last
8 line item, dated April 5, 2011, from yourself to Andy Palmer,
9 Frank Terraferma, with a cc to the law firm. The notes
10 reference "Email identifying provisions in PCS for HB1355 that
11 recipients may wish to review". Help me understand that email.

12 A. Okay. I had identified-- PCS, by the way, is a
13 proposed committee substitute.

14 I believe this would have been a bill that had
15 come out of one of the House committees, and I had simply
16 identified provisions that may have been changed in that PCS,
17 and asked Andy and Frank to take a look and see if they had any
18 concerns or thoughts about them.

19 Q. With regard to the provisions that you identified,
20 did any of those relate to the four sets of voting changes?

21 A. I don't believe they did, no.

22 Q. Mr. Mitchell, would you briefly describe your
23 educational background?

24 A. Sure. Undergraduate degree from Auburn University,
25 1985. Law degree from the University of Georgia, 1991.

1 Q. Any additional education beyond law school?

2 A. No.

3 Q. Can you just briefly walk me through your
4 professional work history, following law school?

5 A. I think for relevancy purposes, I worked at the
6 Department of State from 1994 to 2000 as an attorney, and as a
7 senior attorney in the Division of Elections. At the time I
8 left I was a senior attorney in the Division.

9 After 2000, I briefly worked for the Department
10 of Education as an attorney.

11 Joined the House, Florida House in 2001, as a
12 senior attorney in the House Rules Ethics and Elections
13 Committee.

14 Staff Director for the House Ethics and
15 Elections Committee from 2003 or 2004, until 2008.

16 Then a senior attorney for House counsel 2008
17 and 2009. Left the House in 2009.

18 Q. Let me just walk back through that briefly. So you
19 mentioned that from 1994 to 2000 you worked at the Department
20 of State.

21 A. Correct.

22 Q. I believe you mentioned two titles you held; first as
23 an attorney, and second as a senior attorney in the Division of
24 Elections?

25 A. Uh huh (Indicating in the affirmative).

1 Q. Can you roughly just breakdown the amount of time for
2 the six years between 1994 and 2000, what the breakdown was of
3 those two titles?

4 A. Sure. The attorney period from 2004, until I believe
5 19-- I am sorry. 1994 to 1997, I was in the General Counsel's
6 office. Some time in 1997, I moved to the Division of
7 Elections. There were two attorneys in the division at the
8 time, but they were treated separately from the General
9 Counsel's office. I was there until November 2000.

10 Q. With regard to your position in the General Counsel's
11 office, what generally was your role?

12 A. Legal support for the various divisions in the
13 department, but it ranged from rule review for cultural affairs
14 and historical resources to contract review. From time to time
15 we would assist with the Division of Elections. It was a
16 variety of things related to the department.

17 Q. Let's focus on elections issues. What involvement
18 did you have when you were in the General Counsel's office of
19 the Department of State with election law issues?

20 A. There may have been some legal support with
21 litigation on an as needed basis.

22 Q. Did you play any role in connection with drafting
23 election legislation?

24 A. No.

25 Q. You said in 1997, you moved from the Department of

1 State General Counsel's office to the Department of State
2 Division of Elections office?

3 A. Uh huh (Indicating in the affirmative).

4 Q. I am sorry. Is that correct?

5 A. Yes.

6 Q. You were a senior attorney in the Division of
7 Elections?

8 A. Correct.

9 Q. What were your responsibilities in that position?

10 A. A lot of contact with the public, answering a lot of
11 legal questions with regard to the election code, drafting
12 legal opinions, formal opinions, informal opinions, assisting
13 candidates with questions when they would call. Providing
14 input on election legislation, if asked.

15 Q. Did you have any role in drafting election
16 legislation?

17 A. I don't recall. I don't think I did. If I did it
18 was very minimal.

19 Q. You said that you left the Division of Elections in
20 November of 2007. What was the reason for your departure?

21 A. Actually it was November of 2000.

22 Q. I am sorry. November of 2000.

23 A. I had taken another job with the Department of
24 Education.

25 Q. Other than assuming another job, was there another

1 reason you left the Department of State?

2 A. No.

3 Q. You said that you were briefly with the Department of
4 Education, was that from 2000 to 2001?

5 A. Correct.

6 Q. Just briefly, what was your role there?

7 A. I was the attorney for the Bureau of Student
8 Financial Assistance, and provided a lot of legal guidance on
9 student financial aid, some personnel issues, federal education
10 regulations, things like that.

11 Q. You were there for approximately a year and then
12 left?

13 A. Uh huh (Indicating in the affirmative).

14 Q. Why did you leave that job?

15 A. I had been asked to come to the House. Been
16 recruited.

17 Q. Who recruited you to come to the House?

18 A. I don't recall. I think there was a position open in
19 the Rules Ethics and Elections Committee, and because of my
20 background at the division I was asked if I wanted to come to
21 the House.

22 Q. You accepted that position in 2001?

23 A. Uh huh (Indicating in the affirmative).

24 Q. I believe you said you were there until 2003 or 2004?

25 A. With the House, I was there until 2009.

1 Q. I am sorry. So you had different positions, but you
2 were with the House from 2001 to 2009?

3 A. Correct. Right.

4 Q. So, the first position you held was with the House
5 Rules Ethics and Elections Committee; you were a senior
6 attorney?

7 A. Correct.

8 Q. How long did you hold that position?

9 A. Two years, give or take.

10 Q. Okay. Does the House Ethics and Elections Committee,
11 does that committee still exist?

12 A. No.

13 Q. Has its role been subsumed into a different
14 committee?

15 A. I would assume so, yes.

16 Q. What committee is that, do you know?

17 A. Probably the House State Affairs Committee.

18 Q. In your role as a House senior attorney, what were
19 your responsibilities?

20 A. Drafting legislation, preparing for meetings,
21 drafting amendments, giving committee members guidance on
22 drafting their own amendments.

23 Q. Did that relate generally to election legislation?

24 A. Yes.

25 Q. Then in 2003 or 2004, you became Staff Director for

1 the House Rules Ethics and Elections Committee?

2 A. Correct.

3 Q. How did your responsibilities change when you assumed
4 that position?

5 A. There was some supervisory responsibilities. I
6 believe I had two analysts working for me, who did a lot of the
7 drafting, but I also did a lot of the drafting of legislation
8 and amendments. As staff director, I would prepare the
9 committee meetings and prepare talking points for members,
10 prepare any kind of meeting materials that members required.

11 Q. Then I believe you said in 2008 you assumed a
12 different title; you were a senior attorney for the House
13 Council?

14 A. Correct.

15 Q. Briefly, describe what that is? what is the House
16 Council?

17 A. There were several councils. Every few years, when
18 there is a new speaker, they generally shake up the committee
19 and council structure. This was a council on government
20 oversight and sunset review, I believe. We were tasked with
21 looking at agencies, and their continuing functions, whether
22 those functions were being performed efficiently, and whether
23 there was a need for the agency, or whether there was a need
24 for the agency perhaps to be moved into another agency, or
25 subsumed by another agency.

1 Q. You were a senior attorney in that particular council
2 office?

3 A. Right. I think my title was-- it may have been
4 senior analyst.

5 Q. You said you held that position from 2008 to 2009?

6 A. Uh huh.

7 Q. what happened after 2009?

8 A. I left the House and joined the Coates Law Firm.

9 Q. Is that where you work presently?

10 A. It is.

11 Q. what were the circumstances of your departure from
12 the House?

13 A. Simply looking for a new position in the private
14 sector. My tenure of the House had run its course, and I was
15 looking for something different.

16 Q. with regard to the House council position, that you
17 held from 2008 to 2009, did you have any involvement with
18 election law issues in that position?

19 A. No, not really.

20 Q. would it be fair to summarize your experience with
21 election law issues, having gathered that experience in your
22 position at the Department of State, between 1994 and 2000, as
23 well as with the House Rules Ethics and Elections Committee
24 from 2001 until 2008.

25 A. (No audible response)

1 Q. I'm sorry. Is that a yes?

2 A. Yes. I am sorry.

3 Q. Thank you. So, would you consider yourself fairly
4 knowledgeable about the Florida election code?

5 A. Yes.

6 Q. I would like to turn now to the four sets of voting
7 changes that are at issue in the preclearance case. I think it
8 may be easiest to go through them one at a time, to the extent
9 we can, although there may be some overlap.

10 why don't we start with the third-party voter
11 registration organization change. When did you first discuss
12 the change to the third-party voter registration that was
13 ultimately enacted in connection with House Bill 1355?

14 A. When you say ultimately enacted, are you asking me
15 when did I first discuss the final version of the bill?

16 Q. I would like to go back further than that. With
17 regard to the third-party voter registration organization
18 change, let's reference the changes that ultimately went into
19 law in connection with House Bill 1355.

20 It's my understanding there were a number of
21 changes to that provision throughout the legislative process,
22 and what I would like to do is go back as far as back in time
23 to the first conversation you had anyone with regard to
24 third-party voter registration, that ultimately was related to
25 the change concerning third-party voter registration occasioned

1 by House Bill 1355?

2 A. Okay. I may have had some conversations with
3 Republican Party staff about third-party voter registration,
4 back in January of 2011.

5 Q. Do you believe that January of 2011 would have been
6 the first conversation. There wouldn't have been anything in
7 2010?

8 A. There may have been something prior to that, but I
9 don't recall.

10 Q. And, so is it your-- I am trying to understand where
11 this starts, in terms of the timeline. I am trying to get an
12 understanding if it's January 2011 forward, or earlier than
13 that.

14 A. There may have been some conversations back in
15 November, late October 2010.

16 Q. You said conversations with the Republican Party of
17 Florida staff, who are the individuals that you discussed that
18 with?

19 A. Probably Andy Palmer. That was probably it. Maybe
20 Frank Terraferma.

21 Q. These conversations would have been in approximately
22 the October, November, December, January period between the end
23 of 2010 and the beginning of 2011?

24 A. Uh huh (Indicating in the affirmative).

25 Q. Can you describe the conversations that occurred?

1 A. I think those are probably privileged.

2 Q. Help me understand that. Did any of these
3 individuals, Mr. Palmer, Mr. Terraferma, approach you
4 requesting legal advice?

5 A. With regard to the election bill they did, yes.

6 Q. Without invading the province of the privilege, I am
7 interested in the conversations you had. You said they
8 probably approached you with regard to the elections bill?

9 A. Yes, with comments of the election draft that I had
10 presented to them.

11 Q. So, referring back to the privileged log, these
12 communications reference the draft that you created and
13 subsequent conversations between yourself and those individuals
14 about the substance of that draft?

15 A. Right.

16 Q. Why did you originally prepare the draft election
17 bill that was subsequently discussed between yourself and these
18 individuals, with the Republican Party of Florida?

19 A. That's a good question. Our firm engages in a
20 practice before the Elections Commission, and before the Ethics
21 Commission, and from time to time we also help a lot of
22 political entities with their reporting before the Department
23 of State.

24 Typically, what I do before session begins is I
25 look at changes that I think would be beneficial to our clients

1 with regard to Chapter 106, campaign finance chapter. So I
2 began drafting changes that I think would be beneficial that
3 may make a practice before the Elections Commission easier or
4 more transparent. In this case, that's how this election bill
5 got started.

6 Q. Let me back-up a little bit. You mentioned that the
7 Coates Law Firm practices before the Elections Commission, and
8 I believe you mentioned one other.

9 A. Ethics Commission.

10 Q. I am not familiar with those commissions. Can you
11 describe what they are?

12 A. The Ethics Commission is a constitutional commission
13 that hears ethics complaints against public officials. It's
14 also responsible for housing financial disclosures of public
15 officials; state, county local.

16 The Elections Commission is a nine member
17 commission that accepts civil complaints filed typically
18 against candidates for election law violations. The election
19 commission has jurisdiction over Chapter 104, Chapter 106 and I
20 believe one or two provisions of Chapter 105.

21 Q. We had discussed previously that Chapter 106 of the
22 election code deals with campaign finance.

23 A. Correct.

24 Q. What does Chapter 104 relate to?

25 A. Chapter 104 has a variety of criminal provisions

1 related to election code violations.

2 Q. You mentioned a couple of chapters, I believe you
3 said Chapter 104, 106, and was it 105?

4 A. Correct.

5 Q. What does 105 relate to?

6 A. Chapter 105 relates to non-partisan elections of
7 primarily school board candidates and judicial candidates.

8 Q. So in connection with that practice, before both the
9 Elections Commission and the Ethics Commission, I believe you
10 said prior to a legislative session you will sit down and look
11 at the election code, and identify areas where you think there
12 are changes that would be beneficial to your clients; is that
13 right?

14 A. Correct.

15 Q. In connection with that, I believe you said that you
16 were looking for changes that would be beneficial, changes to
17 Chapter 106 that would be beneficial to your clients; is that
18 the focus, the campaign finance provisions?

19 A. It is.

20 Q. So, with regard to 2011, the draft that you prepared,
21 the four sets of changes that we are talking about, do any of
22 those relate to Chapter 106?

23 A. I don't believe they do.

24 Q. Help me understand that. If your focus is on trying
25 to identify changes to Chapter 106 that might be interest to

1 your clients, why would you have been considering changes to
2 the third-party voter registration provisions?

3 A. I think the way these election bills typically go, a
4 draft is prepared by House staff, and it typically picks up
5 different changes that will incorporate election
6 administration, like third-party voter registration, along the
7 way. I don't recall specifically why the third-party voter
8 registration provisions were something that-- I don't think
9 that I had any interest in those.

10 Q. It sounds like third-party voter registration is not
11 something that you focus on; is that fair to say?

12 A. Sure.

13 Q. If that's the case, then why would that third-party
14 voter registration change have been part of these draft bills
15 that you were preparing?

16 A. It may have come out of a draft that I prepared after
17 meeting with the Republican Party staff.

18 Q. Just help me unpack that a little bit. Would it be
19 fair to say the Republican Party staff had asked you to look at
20 the third-party voter registration changes, and that's what
21 prompted you to do so, given that otherwise that wouldn't have
22 been something you would have focused on?

23 A. Correct.

24 Q. Do you recall anything about the communications with
25 Republican Party of Florida staff with regard to third-party

1 voter registration changes that prompted you to look at that
2 issue, and prepare draft language?

3 MR. THOMAS: Objection; I believe you are invading
4 the privilege at this point, but this witness can better
5 analyze that.

6 A. I think that's privileged.

7 BY MR. O'CONNOR:

8 Q. Okay. So that I can understand the privilege, who
9 was the client who was communicating with you with regard to
10 the third-party voter registration changes?

11 A. Andy Palmer.

12 Q. At the time, in approximately January 2011, was
13 Mr. Palmer the Executive Director of Republican Party of
14 Florida?

15 A. He was.

16 Q. Let me make sure I understand this. It sounds like
17 at the end of 2010, beginning of 2011, you had communications
18 with staff of the Republican Party of Florida, including
19 Mr. Palmer, during which those Republican Party of Florida
20 staff members requested that you look at the third-party voter
21 registration issue, and prepare some draft language; is that a
22 fair summary?

23 A. I think so, yes.

24 Q. What did you do then?

25 A. I really don't recall. The bill I presented to the

1 staff was probably 40 or 50 pages long. I don't remember what
2 I did with regard to the third-party voter registration stuff.

3 Q. You said that the bill you presented to the staff.
4 when you say staff, are you referring--

5 A. RPOF staff.

6 Q. You said that was 40 or 50 pages?

7 A. Yeah, give or take.

8 Q. Within that were the provisions regarding third-party
9 voter registration?

10 A. I think so. I can't say for certain.

11 Q. I would like to show you a document that we will mark
12 as Mitchell Exhibit 2.

13 Mr. Mitchell, while you are taking a look at
14 that, I will note for the record that this is an email from
15 yourself, dated January 25, 2011, to Jim at Enwright
16 Consulting, with a copy to Ms. Fenner, and the attachment is
17 titled third-party voter registration; is that correct?

18 A. Yes.

19 Q. Just so I am clear, the Jim at Enwright Consulting,
20 is that Mr. Rimes?

21 A. It is.

22 Q. And, the cc to Ms. Fenner, that's Noreen Fenner from
23 your office?

24 A. Correct.

25 Q. Do you recognize this document?

1 A. I do.

2 Q. what is it?

3 A. It's a redraft of the third-party voter registration
4 language in 97.0575.

5 Q. Do you recall preparing this?

6 A. Vaguely.

7 Q. what do you recall about it?

8 A. Nothing.

9 Q. we had been talking previously about communications
10 you had with staff of the Republican Party of Florida, with
11 regard to third-party voter registration, but is it the case
12 that Mr. Rimes, he is not affiliated with the Republican Party
13 of Florida; is that right?

14 A. He is not.

15 Q. who is he affiliated with?

16 A. Enwright Consulting.

17 Q. what is Enwright Consulting?

18 A. I believe they are a political consulting group, and
19 also a client.

20 Q. what issues do they focus on?

21 A. I think they actually help candidates with their
22 elections: state, local, federal.

23 Q. Help me just briefly understand that. In what
24 capacity are they helping candidates?

25 A. From soup to nuts. Helping them file their campaign

1 reports. Helping with their political advertising,
2 fundraising.

3 Q. Okay. Why would you have sent this email to
4 Mr. Rimes, and attaching a document that's titled third-party
5 voter registration?

6 A. I guess he had an interest in it, and I don't really
7 recall why.

8 Q. I would like to focus on the attachment, which is the
9 next several pages in the document. Is it draft legislation
10 that you had prepared?

11 A. Yes.

12 Q. Is it your understanding that this was prepared at
13 the request of the Republican Party of Florida, or was it
14 prepared by someone else?

15 A. I believe this was prepared at the request of Jim
16 Rimes.

17 Q. So I want to circle back. Previously we had
18 discussed that you had a discussion with the staff of the
19 Republican Party of Florida, so help me understand that. Let's
20 take it one more step back. Is this the first draft of changes
21 to the third-party voter registration laws of Florida that you
22 prepared?

23 A. Probably so.

24 Q. I think you had just said that you think you may have
25 prepared this in response to a request from Mr. Rimes; is that

1 right?

2 A. Right. Correct.

3 Q. Help me understand that, because it seems like
4 previously you had mentioned that this may have been prepared
5 in response to a request from the Republican Party of Florida
6 but now it sounds like it may have been prepared in response to
7 a request from Mr. Rimes.

8 A. I may have had some conversations with Andy Palmer,
9 and he may have directed me to speak to Jim Rimes about
10 third-party voter registration.

11 Q. What do you recall about that conversation?

12 A. Any conversation with Andy Palmer?

13 Q. Yeah. You had said that Mr. Palmer may have directed
14 you to speak to Mr. Rimes regarding third-party changes.

15 MR. THOMAS: Privileged.

16 A. I think that's probably privileged.

17 BY MR. O'CONNOR:

18 Q. Okay. Help me understand the timeline. Is it your
19 view that you had a conversation with Andy Palmer, the
20 Executive Director of the Republican Party of Florida, and that
21 he directed you to talk to Jim Rimes at Enwright Consulting?

22 A. That's my recollection, yes.

23 Q. Do you recall that occurred in January 2011?

24 A. Give or take, yeah. It may have been occurred in
25 December. And, then I prepared this draft in January.

1 Q. Okay. Then did you have communications with
2 Mr. Rimes concerning third-party voter registration?

3 A. I don't recall if I had any phone conversations with
4 him. Obviously, there was an email, but I don't recall the
5 extent of the conversations with Jim about third-party voter
6 registration.

7 Q. As a result of those communications, did you proceed
8 to prepare the attachment that is attached to the email marked
9 as Mitchell Exhibit 2?

10 A. Yes.

11 Q. Focusing on the attachment to Mitchell Exhibit 2,
12 what was the basis for the changes that you have laid out here
13 in this document?

14 A. Specifically, I don't recall, Dan. I think we were
15 trying to clean up some provisions that needed to be clarified.
16 If you go back and look through the draft, I don't think there
17 were any significant changes. I don't recall specifically what
18 our purpose was. I believe there is language here in the back
19 that talks about the creation of a database that would house
20 all of the third-party voter registrations. I think that was
21 new. I believe that would be a responsibility of the
22 supervisors of elections.

23 Q. I would like to ask about, at the top of the draft
24 legislation here there is a section one, and there is a sizable
25 segment of text that's been stricken, and then replaced. Do

1 you see that?

2 A. Uh huh (Indicating in the affirmative).

3 Q. Is it your understanding that the provisions that
4 were removed provided for the requirements that a third-party
5 voter registration organization needed to meet if they were
6 going to engage in voter registration activities in the State
7 of Florida?

8 A. Right.

9 Q. Why was that language deleted?

10 A. I don't recall. Note a lot of that language that's
11 deleted has been re-introduced in subsections A, B, C and D.

12 Q. That's what I wanted to ask you about next. There is
13 a sizable component of text that's been deleted, and then there
14 is text that's been added. Do you know why these provisions
15 were taken out, and then to the extent they are related to the
16 provisions below, put back in but in a different form?

17 A. I don't recall.

18 Q. I would like to ask you about Section 1D, that refers
19 to a sworn statement from each registration agent. Let me read
20 for the record what the provision is. It says, "(d) A sworn
21 statement from each registration agent employed by or
22 volunteering for the organization stating that the agent will
23 comply with all state laws and rules regarding the registration
24 of voters on a form that provides notice of the criminal
25 penalties for false registration". Did I read that correctly?

1 A. Yes.

2 Q. why is that provision included in here?

3 A. I don't recall.

4 Q. Do you know why there is a provision that it would
5 require a sworn statement from the registration agent?

6 A. I don't.

7 Q. Do you know why that form would need to provide
8 notice of the criminal penalties for false registration?

9 A. No. I think it's putting registration agents on
10 notice that there may be criminal penalties, if they falsely
11 register.

12 Q. Do you have a sense as to the affect of that addition
13 would be on third-party voter registration groups, and their
14 agents, if they had to sign a form that gives them notice of
15 criminal penalties?

16 A. I don't, other than that what the language says
17 itself. I think it puts them on notice that it's a serious
18 offense and they need to be careful if they are going to fill
19 out this sworn statement.

20 Q. Do you think it makes it less likely that people
21 would volunteer to do voter registration activities if they
22 have to sign a form that swears that-- a sworn statement that
23 puts them on notice of criminal penalties?

24 A. I don't think so.

25 Q. That's based on your personal opinion?

1 A. Yes.

2 Q. I would like to focus on paragraph two on the next
3 page, and it adds a provision that reads, "A person who
4 intentionally violates the provisions of this section is guilty
5 of a misdemeanor", and it continues. Did I read that
6 correctly?

7 A. Uh huh.

8 Q. Do you recall why that provision was added?

9 A. I don't.

10 Q. Let's focus on paragraph three. The end of that long
11 paragraph there are a number of penalties that are listed.
12 There is a civil penalty of \$250 for each violation, not to
13 exceed \$5,000.

14 A. Right.

15 Q. Do you recall why those civil penalties were
16 incorporated?

17 A. The third-party voter registration language that was
18 current law already had a fairly detailed scheme for penalties.
19 I don't know if this was much of a change. There may have been
20 higher a ceiling of penalties here, maybe \$5,000. But, that's
21 all I recall.

22 Q. Do you recall what the old penalties scheme was,
23 under the existing law, that has been deleted? If it helps, a
24 couple of pages later there is--

25 A. It's under sub three that was stricken.

1 Q. what were the old penalties or fines?

2 A. It looks like they were \$50, \$100 and \$500, depending
3 on when the registrations were collected.

4 Q. was there a maximum aggregate fine of \$1000?

5 A. I believe there was. Uh huh (Indicating in the
6 affirmative).

7 Q. I am sorry. Is that a yes?

8 A. Yes.

9 Q. So, under the changes, those fines were deleted and
10 were replaced with these higher fines; is that right?

11 A. Apparently so. Yes.

12 Q. Do you recall why that was?

13 A. I don't.

14 Q. I would like to focus on paragraph three that's been
15 deleted. Do you see that?

16 A. Uh huh (Indicating in the affirmative).

17 Q. It reads, "A third-party voter registration
18 organization that collects voter registration applications
19 serves as a fiduciary to the applicant, ensuring that any voter
20 registration application entrusted to the third-party voter
21 registration organization, irrespective of party affiliation,
22 race, ethnicity, or gender, shall be promptly delivered to the
23 division or the supervisor of elections". Did I read that
24 correctly?

25 A. Uh huh.

1 Q. why was that provision deleted?

2 A. I don't know.

3 If you look at the way this is drafted, the bulk
4 of subsection one was deleted, all of subsection two, and all
5 of subsection three, and all of four were deleted. So I think
6 it was just part of a mass deletion of that section.

7 Q. why, in sort of the mass deletion of those
8 provisions, why would this draft that you prepared remove the
9 requirement that a third-party voter registration organization
10 serve as a fiduciary to an applicant?

11 A. I don't recall.

12 Q. I would like to focus on paragraph three, subsection
13 c.

14 A. The stricken language?

15 Q. Yes. This is a section we were referencing earlier
16 talking about penalties. There is a provision that is on the
17 very final sentence of this page, and goes to the next page, it
18 appears to delete the provision that provides that the
19 secretary shall waive fines if the failure to deliver a voter
20 registration application is based on force majeure or
21 impossibility. why is that provision stricken?

22 A. I am trying to refresh my memory. I don't recall,
23 Dan. I don't know.

24 Q. Okay. So then with regard to this document, let me
25 make sure that I understand it, this is a document you prepared

1 following a discussion with either Mr. Palmer at the RPOF, or
2 Mr. Rimes at Enwright Consulting, or both; is that right?

3 A. Uh huh (Indicating in the affirmative).

4 Q. This document, Mitchell 2, reflects proposed changes
5 to the third-party voter registration provisions of Florida
6 law?

7 A. Right.

8 Q. And, is it your testimony that you don't really
9 recall why these changes were made?

10 A. I don't.

11 Q. But you were the one who prepared this draft?

12 A. Yeah. I was probably instructed to put these into a
13 draft.

14 Q. Instructed by whom?

15 A. May have been Jim Rimes, or asked to put them in a
16 draft. I don't know. I didn't have much interest in this
17 provision, personally.

18 Q. So you think it may have been Mr. Rimes who
19 instructed you to prepare this draft language that included
20 these changes?

21 A. That may have been the case. I don't recall.

22 Q. You said that third-party voter registration is not
23 an area of the election code that you focused on?

24 A. Correct.

25 Q. How did Mr. Rimes communicate the changes that he

1 wanted you to embody in this draft language?

2 A. I don't recall.

3 Q. Do you recall if he gave you any documents, any
4 sample language that he wanted to see included?

5 A. He may have given me some sample language.

6 Q. Do you still have any of those communications, either
7 the sample language he gave you, or an email?

8 A. I don't.

9 Q. Do you recall referencing any document, or other
10 source of information, when preparing this draft of third-party
11 voter registration changes?

12 A. I don't, no.

13 Q. Do you recall if there was any third-party source
14 that provided the basis for these changes?

15 A. No.

16 Q. Okay. Since third-party voter registration changes
17 is not an area that you focus on, do you think that you would
18 have had to have some guidance, or some type of listing of
19 changes that were desired in order to prepare this, as opposed
20 to sitting down yourself and saying, here is how I think this
21 change should be?

22 A. Yes. I must have gotten some kind of draft from Jim
23 Rimes, I would imagine, but that was the extent of my
24 involvement. I think my clients, and House staff, were
25 expecting me to-- because of my former employment-- put these

1 things in the proper format into an election bill, and this may
2 have been an example of something that came to me, I was asked
3 to put in an election bill draft, but I really had no interest
4 in. That's the best way I can explain it.

5 Q. Do you know why either Mr. Rimes or Mr. Palmer would
6 want these changes to the third-party voter registration
7 language of the Florida election code to be made?

8 A. No. I mean, I think it was common knowledge, it was
9 in the public realm there had been groups that were collecting
10 voter registration applications that often times failed to turn
11 them in, or turned them in late. So, I imagine this was in
12 response to those public reports.

13 Q. What are the public reports you are referring to?

14 A. I guess this was probably the 2008 or 2010 election
15 cycles, just general articles about groups that weren't turning
16 in their voter registration applications.

17 Q. Do you recall the name of any of these groups?

18 A. I think ACORN was probably a group.

19 Q. Were there any others?

20 A. There may have been some articles with regard to the
21 League of Women Voters. I don't know if there were any
22 instances of the League turning in applications late, but I
23 know they were probably quoted in the articles as having some
24 concerns.

25 Q. The League was quoted in the articles as having

1 concerns with what?

2 A. Voter registration regulations.

3 Q. What is your view of what the League's concern was
4 with voter registration regulations?

5 A. Just generally I think there was the feeling that the
6 League was going to stop registering applicants, but this was
7 back in 2008 or 2009, before this legislation was ever drafted.
8 Because we have had a voter registration law on the book for
9 years.

10 Q. In connection with prior iterations of the
11 third-party voter registration--

12 A. With the current law going back to 2008, 2009.

13 Q. With regard to that prior law, there were concerns
14 that the League may suspend voter registration as a result of
15 those prior laws?

16 A. There were quotes to that affect in newspaper
17 articles.

18 Q. You mentioned the League as a potential third-party
19 group that had submitted voter registration forms late. Do you
20 have any basis--

21 A. No. I don't know of any instances where they turned
22 in any late.

23 Q. You had mentioned that there were reports in the
24 media about third-party groups potentially turning in voter
25 registration applications late, and you mentioned ACORN. Were

1 there any other organizations that you heard of turning in
2 voter registration forms late?

3 A. Not that I specifically recall.

4 Q. Do you recall where, in what state those reports
5 related to?

6 A. Florida.

7 Q. What about with regard to ACORN in Florida?

8 A. Simply that there were instances where voter
9 registration applications weren't turned in at all, or turned
10 in late, and voters showed up at the polls and were not
11 registered to vote, and thought they were.

12 Q. Is that the only instance where you had heard of
13 third-party groups turning in voter registration forms late in
14 Florida? Is this reference to ACORN doing it some time in the
15 past?

16 A. That's all I can recall, yeah.

17 Q. Beyond that, do you have any information about why
18 these changes to third-party voter registration laws that were
19 embodied in this draft you prepared were requested?

20 A. No.

21 Q. Do you know what types of groups utilize third-party
22 voter registration organizations to register to vote?

23 A. What types of group use the organizations?

24 Q. Yes. Do you have a sense of what types of Florida
25 residents use third-party voter registration organizations to

1 register to vote?

2 A. From an applicant's perspective, or from the group's
3 perspective?

4 Q. From the applicant's perspective.

5 A. What types of groups-- I think from an applicant's
6 perspective, a variety of groups.

7 Q. Do you have any sense as to the characteristics of
8 any of those groups?

9 A. No.

10 Q. Have you ever heard that minority groups
11 disproportionately rely on third-party voter registration
12 organizations to register to vote?

13 A. No.

14 Q. With regard to who uses third-party voter
15 registration organizations, would it be fair to say since
16 that's not an area you focus on, it's not something you would
17 have much knowledge with regard to?

18 A. That's true. I guess for purposes of the law,
19 third-party voter registration groups encompass state agencies
20 that provide voter registration services like the Department of
21 Motor Vehicles, Department of Children and Families. But, in
22 terms of private third-party voter registration groups, I don't
23 have any information about who their prospective voter might
24 be, or who their applicants are.

25 Q. Are you aware that the League of Women Voters of

1 Florida has suspended all its registration activities in the
2 State of Florida as a result of the House Bill 1355?

3 MR. THOMAS: Object to the form of the question.

4 A. Only what I have read in the newspaper, media.

5 BY MR. O'CONNOR:

6 Q. What have you read?

7 A. I have read that they have threatened to do that. I
8 don't know if they have. I don't know.

9 Q. Do you think it would be a bad thing if the League of
10 Women Voters stopped doing voter registration?

11 A. Probably. Sure.

12 Q. Why do you say that?

13 A. I think probably the more responsible groups out
14 there that can register voters the better. I don't have any
15 problem with that. Like I said, I don't have any opinion one
16 way or the other about the third-party language, other than I
17 think if someone registers to vote, and their application
18 doesn't get turned in, I think that's a problem.

19 Q. With regard to third-party voter registrations, were
20 you aware of any gaps or loopholes in third-party voter
21 registration law leading up to the 2011 regular session of the
22 Florida legislature?

23 A. What kind of gaps? I don't know if I understand what
24 you are asking.

25 Q. The phrase, the words gaps and loopholes have been

1 used in connection with the third-party voter registration
2 changes. My question is whether you were aware of such issues
3 with that law?

4 A. No.

5 Q. Other than the instance that you read about in the
6 media of ACORN turning in voter registration applications late,
7 are you aware of any other voter registration fraud, or
8 misconduct that was caused by private third-party voter
9 registration organizations?

10 A. Not off the top of my head, no.

11 Q. In the final version of the third-party voter
12 registration changes that were occasioned by House Bill 1355,
13 there is a provision that a voter registration application must
14 be turned in within 48 hours. Are you familiar with that
15 provision?

16 A. I am.

17 Q. Going back to Mitchell Exhibit 2, is there any
18 requirement of 48 hours in your draft?

19 A. No.

20 Q. Why not?

21 A. I think it was probably a change that was made during
22 the legislative process. I had nothing to do with, at least in
23 terms of putting it in a bill draft.

24 Q. Help me understand that then. Is it the case that
25 with regard to all of the various drafts of the third-party

1 voter registration change that you were involved with, none of
2 them included a 48-hour requirement to turn around a voter
3 registration application?

4 A. That's correct.

5 Q. Do you know what group, or what individual was the
6 source of that 48 hour requirement?

7 A. I don't.

8 Q. We have established that 48 hour requirement was not
9 included in any draft that you prepared; is that correct?

10 A. Correct.

11 Q. Is that because neither you, nor the clients that
12 were representing, believed that a 48 hour turnaround for voter
13 registration applications was needed?

14 MR. THOMAS: Object to the form. I think you got a
15 privileged issue as to what his clients may have believed,
16 or communicated to him about it.

17 A. I mean, I can answer with my personal feelings, but
18 in terms of what my clients might have asked, I think there was
19 a 10 day provision in there under the current law, and I
20 personally felt like 10 days was fine.

21 BY MR. O'CONNOR:

22 Q. Without getting into the substance, I would like to
23 ask whether you ever discussed with your clients, either at the
24 Republican Party of Florida, or Mr. Rimes, the 10 day
25 requirement under the old law, or the 48 hour requirement under

1 the new law, with regard to voter registration applications?

2 A. I don't think I did.

3 Q. Do you have any information as to why the requirement
4 to turn a voter registration application in under the new law
5 is 48 hours, as opposed to three days, or five days, or seven
6 days?

7 A. I don't. I don't. I don't know if it was just part
8 of the legislative process. I don't know who came up with the
9 48 hours. I don't know if there were discussions that it be
10 two days at one point, or three days. I am not privy to those
11 conversations. I don't know.

12 Q. Are you aware that under the old law that provided
13 for 10 days to turn in a voter registration application, that
14 some private third-party voter registration organizations used
15 that period of time to conduct quality control checks of voter
16 registration applications that they received?

17 A. I wasn't aware of that.

18 Q. Do you have any knowledge with regard to whether
19 private third-party groups will be able to continue to do
20 quality control checks, if under the old law they had 10 days
21 and now under the new law they have 48 hours?

22 A. What do you mean by quality control check?

23 Q. Reviewing a voter registration application to ensure
24 that it is filled out completely and correctly.

25 A. I wasn't aware of that. Forty-eight hours may be

1 enough time to do that. I don't know.

2 Q. You don't have any information one way or the other
3 as to whether it can be done?

4 A. I don't.

5 Q. Do you have any information as to whether the
6 reduction from 10 days to 48 hours to turn in a voter
7 registration application will result in more incomplete, or
8 incorrectly completed voter registration applications?

9 A. I don't know. I don't know. I don't have any
10 evidence of that.

11 Q. Do you know what a supervisor of election does if
12 they receive an application either incomplete or incorrectly
13 filled out?

14 A. I don't recall the steps that they take. I don't
15 recall if they contact-- if the application has been received
16 through a third-party group, if they contact the group or the
17 individual applicant. I don't know.

18 Q. Following the passage of House Bill 1355, the
19 Department of State issued a series of rules concerning
20 implementation of that provision. Did you have any involvement
21 in that process?

22 A. No.

23 Q. Are you familiar with the rule that was promulgated
24 by the Department of State in connection with the new changes
25 to third-party voter registration occasioned by House Bill

1 1355?

2 A. Yes.

3 Q. Describe your familiarity with that rule.

4 A. I know there are forms that must be filled out that
5 are promulgated, incorporated in that rule, that must be filled
6 out by the organization, identifying your registration agents.
7 There is a form that must be completed by the registration
8 agent. And, I know if things change at any time for the
9 third-party group those amendments or updates need to be filed
10 with the Department of State.

11 Q. Have you heard any concerns from supervisors of
12 elections about the burdens that will be associated with the
13 new third-party voter registration law, or the rule that was
14 promulgated pursuant to it?

15 A. No.

16 Q. How about from private third-party voter registration
17 organizations?

18 A. No, I haven't heard anything.

19 Q. How about with regard to the League of Women Voters?

20 A. No.

21 Q. You have testified previously that you at least read
22 that they were concerned with the new law, and were considering
23 suspending their voter registration application collection; is
24 that right?

25 A. Right.

1 Q. would you characterize that as a concern related to
2 the new law?

3 A. Several years ago, yes.

4 Q. Oh, are you not familiar with anything more recent
5 than that?

6 A. No.

7 Q. With regard to the third-party voter registration
8 changes that were enacted in House Bill 1355, what do you
9 believe the purpose of those changes was?

10 A. The only thing that sticks out with me is the
11 substantive change of turning in an application within 10 days,
12 versus 48 hours, which was the new requirement. I believe the
13 Department of State already had rules in place for the old
14 voter registration law.

15 MR. O'CONNOR: Mr. Mitchell, we have been going for
16 over an hour. would you like to take a break?

17 A. We can take a quick break.

18 whereupon, a brief recess was taken at
19 10:27. Testimony resumed at 10:33.

20 BY MR. O'CONNOR:

21 Q. We are back on the record.

22 Mr. Mitchell, over the break did anything occur
23 to you that you would need to put on the record, or clarify, or
24 explain any of your prior testimony?

25 A. No.

1 Q. I would like to show you a few documents to help
2 establish a timeline with regard to the third-party voter
3 registration change, and then we can shift to some of the other
4 changes.

5 The document I am showing you will be marked as
6 Mitchell Exhibit 3. (Document shown to witness)

7 while you are taking a look at that, I will note
8 for the record that this is an email dated January 26, 2011,
9 from yourself to Kirk Pepper, with a copy to Ms. Fenner and
10 Mr. Coates; is that correct?

11 A. Right.

12 Q. First, who is Kirk Pepper?

13 A. I believe he was in the speakers's office. I don't
14 recall his title, speaker of the House.

15 Q. He was a staffer in that office?

16 A. Correct.

17 Q. The title of this email is election bill, and the
18 body of the email reads, "Attached is the large election bill.
19 Several of the sections will need some tweaking-- we plan to
20 get together on Friday morning to discuss the contents. I am
21 certain there will be changes to the bill after that meeting.
22 I will send a section by section explanation later today". Did
23 I read that correctly?

24 A. Uh huh.

25 Q. What is the large elections bill you are referencing

1 here?

2 A. For lack of a better word, it's a kitchen sink bill.
3 It's got everything from Chapter 106 changes, all the way down
4 to Chapter 97 or 98. I don't recall if there was another bill
5 that was going to be offered in the House, but this was the 40
6 or 50 page bill I was referring to earlier in our deposition.

7 Q. This is the bill that includes provisions that relate
8 to third-party voter registration changes; is that right?

9 A. Yeah, I would assume they were included at this time.

10 Q. Were there also changes with regard to constitutional
11 initiative petitions, and individuals who move between-- either
12 between or within counties and attempt to update their address
13 at a polling place?

14 A. At this point, there may have been changes with
15 regard to changing your address at the polling place. I don't
16 know specifically if the constitutional amendment changes were
17 in here at that point. I don't know.

18 Q. I would like to ask you more about this email. There
19 is reference to, "we plan to get together on Friday morning to
20 discuss the contents". Who is we?

21 A. Probably me and Andy Palmer, and Frank Terraferma,
22 and Joel Springer, with Noreen Fenner present.

23 Q. Are you inviting Mr. Pepper to attend as well?

24 A. No. It was for his information.

25 Q. Why are you sending this email to Mr. Pepper?

1 A. He had asked me to provide an election bill draft. I
2 was doing it at his request.

3 Q. Help me understand that. I think your testimony was
4 you were preparing the draft at the request of two different
5 groups of clients, one the Republican Party of Florida, the
6 other Mr. Rimes; is that right?

7 A. Correct.

8 Q. I think you just testified that Mr. Pepper had asked
9 you for a draft of an election bill?

10 A. Uh huh (Indicating in the affirmative).

11 Q. How do those two different things fit together?

12 A. Kirk had asked for a draft of the bill, some kind of
13 election bill, at some point in late 2010. I had already begun
14 working on some changes to Chapter 106. Probably along the way
15 there may have been some additional changes offered by the
16 Republican Party staff and Jim Rimes. Those were put in a bill
17 and given to Kirk Pepper at his request.

18 Q. Did the request from Mr. Pepper, did that precede
19 these discussions with the Republican Party of Florida staff,
20 and Mr. Rimes?

21 A. I believe so, yes.

22 Q. Why was he asking you for a draft elections bill?

23 A. I guess because of my background, he knew there would
24 be some things I wanted to change to Chapter 106. It was
25 probably a matter of convenience. I had the drafting skills,

1 and it would save them some time.

2 Q. When Mr. Pepper asked you for this draft, did he
3 communicate to you what he wanted to see included in the draft?

4 A. No. In fact, when the bill first was filed it was
5 about 15 pages long.

6 Q. When you refer to the bill as initially filed, is
7 that a bill you had any involvement with?

8 A. Un un (Indicating a negative response). No.

9 Q. Whose bill was that, who prepared that bill?

10 A. I don't know. I believe, you know, the sponsor of
11 the bill, Dennis Baxley, may have communicated with Kirk
12 Pepper, or someone, and it was drafted by House bill drafting.

13 Q. When did that happen in terms of this timeline? We
14 have discussed some communications with different Republican
15 Party of Florida staff, as well as Mr. Rimes in late 2010,
16 January 2011. Help me with the timeline of that.

17 A. I don't recall when 1355 was initially filed by the
18 sponsor, but I am pretty certain it was in 2011, prior to
19 session beginning. Session would have begun some time in March
20 of 2011, so it may have been January or February when that bill
21 was filed by the sponsor.

22 Q. That bill didn't relate to any of the drafting that
23 you were involved with?

24 A. I don't think so, no. I didn't have a hand in
25 drafting that smaller bill, no.

1 Q. Then Mr. Pepper had asked you for a draft of the
2 elections bill in late 2010, or early 2011, and you sent him a
3 draft here on January 26?

4 A. Uh huh (Indicating in the affirmative).

5 Q. The draft that you sent him didn't include any
6 requests from him to include any substance on any particular
7 provisions; is that right?

8 A. Not specifically that I can recall, no.

9 Q. How did he know you would be working on an elections
10 bill draft?

11 A. I don't remember how the communication went down. I
12 know Kirk, and I suppose the House leadership had asked that I
13 work on some kind of draft. I have done it in 2009, 2010 and
14 again in 2011.

15 Q. You said House leadership, you suppose House
16 leadership would have asked you to prepare a draft. Who are
17 you referring to--

18 A. I use that term loosely. Kirk is probably who I need
19 to refer to in that regard. He was in the speaker's office.

20 Q. So, is the reason for this communication just the
21 general state of affairs that in prior years you had prepared
22 election bills, and that he expected you to be doing one for
23 the 2011 regular session?

24 A. Uh huh (Indicating in the affirmative).

25 MR. THOMAS: You need a yes.

1 A. Yes. I am sorry.

2 BY MR. O'CONNOR:

3 Q. In this email you make reference to, I am certain
4 there will be changes to the bill after that meeting; what were
5 you referring to there?

6 A. I don't recall specifically. I don't know if I had
7 in my head there were going to be changes that I knew of. I
8 just know there are always changes in an election bill, and
9 this year is no different. The bill started off at 15 pages.
10 I think by the time it was over with it was close to 100.

11 Q. I'd like you to take a look at what's going to be
12 marked as Mitchell Exhibit 4. (Document shown to witness)

13 Mr. Mitchell, while you are taking a look at
14 that, I will note for the record this is an email you sent on
15 January 26, 2011, to Kirk Pepper with a cc to Ms. Fenner.

16 A. Uh uh.

17 Q. Is that correct?

18 A. Yes.

19 Q. The body of the email states, "Here you go. A
20 section by section is attached", and the attachment indicated
21 in the email is election bill section explanation 1-26-11. Is
22 that right?

23 A. Right.

24 Q. The attachment here that's referenced is that the
25 section by section document that was referenced in the document

1 we were just looking at, Mitchell Exhibit 3?

2 A. I believe it is. Yes.

3 Q. What is this section by section explanation, just
4 generally?

5 A. It really is just an explanation of what each section
6 does. There is no comments by anybody. It's really just
7 almost, if you would, a title to the bill. It's just what each
8 section accomplishes. What we believe it accomplishes.

9 Q. Did you prepare the section by section?

10 A. I did.

11 Q. I would like to ask you about a few sections listed
12 in this. This is the attachment to Mitchell Exhibit 4. I
13 would like to focus on section two. Does this section refer to
14 the third-party voter registration changes that we were
15 discussing a little while ago?

16 A. I think it does.

17 Q. Does it outline a number of the changes that are
18 included in that draft bill?

19 A. It appears that it does, yes.

20 Q. Are a couple of the changes there that it removes the
21 aggregate fine cap of a thousand dollars?

22 A. Yes.

23 Q. Is another change occasioned by that language the
24 removal of the provision that fines would be reduced by
25 three-fourths if the third-party group complied with the

1 registered agent and group information filings?

2 A. Yes.

3 Q. And, is another change, number four listed that
4 registration agent who intentionally violates this section is
5 guilty of a misdemeanor?

6 A. Uh huh (Indicating in the affirmative). Yes.

7 Q. I'd like to focus on section seven. For the record,
8 that reads, "Provides that an initiative petition signature is
9 valid for two years rather than four years". Did I read that
10 correctly?

11 A. You did.

12 Q. Is this provision related to the constitutional
13 initiative petition change that is one of the four sets of
14 voting changes that we discussed earlier?

15 A. Yes.

16 Q. Is the description here accurate, that a change that
17 was made that the signature shelf life was reduced from four
18 years to two years?

19 A. Yes.

20 Q. That was included in the draft that you sent to Kirk
21 Pepper on the 26th; is that right?

22 A. Apparently so. Yes.

23 Q. Why don't we stick with that right now. With regard
24 to the constitutional initiative change, help me understand
25 where that came from.

1 A. That's been an issue that's been of interest to a
2 number of folks for years, and I think it's been proposed for
3 the last eight to 10 years in the legislature. Florida Chamber
4 of Commerce, I think, was interested in it. They proposed
5 through legislators a bill in some form for the last six or
6 eight years that had that provision in it.

7 Q. You said there was a number of folks that were
8 interested, and you referenced Florida Chamber of Commerce.
9 what other groups?

10 A. I don't know specifically. I know the Chamber has
11 had what we called an amendment petition reform bill for years.
12 And, I think their feeling was that four years was too long.
13 The State of Florida at the time had one of the longest
14 petition validity periods of anybody in the country. In fact,
15 there are very few that had two years. And, I think they
16 wanted to see that period cut in half.

17 Q. What other groups were interested in changing the
18 signature shelf from four years to two years?

19 A. I don't know of any other.

20 Q. Why was that provision included in the draft bill
21 that you prepared, as well as the section by section analysis
22 you prepared?

23 A. Probably because it was easy to stick in our bill,
24 and it was a provision that related to election code. I think
25 it's in Chapter 100.

1 Q. Did anyone ask you to include that provision in this
2 draft legislation?

3 A. No, I don't think so.

4 Q. So that's something that when you were drafting the
5 bill you decided to include?

6 A. Uh huh (Indicating in the affirmative).

7 Q. why?

8 A. Just because I know it's something that has been
9 proposed for several years in other legislation.

10 Q. So that isn't something you discussed with any of the
11 staff members of the Republican Party of Florida?

12 A. No.

13 Q. Is that something you discussed with Mr. Rimes?

14 A. No.

15 Q. why does this draft change the initiative petition
16 signature shelf life from four years to two years? why two
17 years?

18 A. I don't think there was any magic in it. It was
19 something that had been proposed for several years, and two was
20 consistent with what some of the other states were doing. It
21 was a little longer than some states, and it kind of put the
22 state of Florida in line with what other states were doing.

23 Q. Do you recall having any discussions with anyone
24 about this particular change with regard to the signature shelf
25 life?

1 A. No.

2 Q. Other than the comments that had been, I presume
3 based on your testimony, floating around that four years was
4 too long for constitutional initiative petition signature shelf
5 life, was there any other reason to reduce the signature shelf
6 life from four years to two years?

7 A. No.

8 Q. Was there any problem with the four year provision?

9 A. Not to my knowledge.

10 Q. Okay. Do you think changing the signature shelf life
11 provision from four years to two years will make it more
12 difficult for constitutional initiative petitions to succeed,
13 and ultimately place language on a ballot to be potentially
14 amended into the Florida Constitution?

15 A. No.

16 Q. Why not?

17 A. I think the reality in Florida is that most people
18 pay to get their constitutional amendments on the ballot, and
19 they do so in about a six to nine month period before the
20 elections.

21 Q. Okay. So you said most use, you said, paid signature
22 collection?

23 A. Uh huh (Indicating in the affirmative).

24 MR. THOMAS: Yes?

25 A. Yes.

1 BY MR. O'CONNOR:

2 Q. You said that's the case for most initiative
3 petitions?

4 A. That's my understanding.

5 Q. Is there some subset of signature petitions that
6 don't use paid signature gatherers?

7 A. Very few.

8 Q. But, there are some?

9 A. There are some.

10 Q. Is it your experience that if a group is not using
11 paid signature gatherers that it will take them longer to
12 gather the requisite signatures?

13 A. No, I don't think so. I think two years is an
14 adequate time period. I think personally that four years, over
15 a four year period people that may have signed petitions may
16 change their minds about issues over a four year period, and I
17 think that's personally too long.

18 Q. Help me understand that. Because, for example, when
19 you vote for president you cast a ballot and that person gets
20 elected and they are in office for four years. Why would you
21 think that whether someone continues to support something-- why
22 that would be different in the constitutional initiative
23 petition context than voting for president?

24 MR. THOMAS: Objection to the form of the question.
25 Ambiguous.

1 BY MR. O'CONNOR:

2 Q. Do you understand my question?

3 A. I think there are two different issues.

4 Constitutional amendment is not dealing with a specific
5 candidate, and it's going to be an issue that's going to be on
6 the ballot, and I just think four years is too long. I think
7 it's a housekeeping problem, too, I think for supervisors and
8 the Department of State to have to maintain and track all these
9 various petition amendment groups that have to keep these
10 things circulating for four years.

11 Q. What's the basis for that opinion?

12 A. I mean, I think it's just common sense. Obviously
13 they have got to maintain and track something for four years
14 versus two years.

15 Q. Have you ever heard a supervisor of elections make
16 any statement to that affect, that four years was difficult for
17 them to comply with?

18 A. Not from a supervisor, no.

19 Q. Did you ever hear that from anyone else?

20 A. Maybe from the Florida Chamber.

21 Q. Does the Florida Chamber have any involvement with
22 the supervisors' duty to receive and review signatures, and
23 then keep track of how long they are valid for?

24 A. No.

25 Q. So, your statement that you thought two years was

1 more appropriate than four years, that's based on your personal
2 opinion?

3 A. I think two is fine. I don't have a personal opinion
4 about whether two is better than four. I just think four is
5 too long. Like I said, I put this in the bill because it's
6 something that's been proposed for several years.

7 Q. Did you do any investigation, or any study, with
8 regard to whether two years would be in any way advantageous to
9 four years?

10 A. Not in this year, no.

11 Q. In past years?

12 A. I may have looked at the issue when I was a staff
13 director in the House, yeah.

14 Q. Do you recall any specifics about that?

15 A. I recall that the Florida Chamber and others probably
16 had a lot of information about that period of time being more
17 appropriate, but I don't know specifically.

18 Q. When you say more appropriate, is that again because
19 it's consistent with their desire to have a shorter period of
20 two years?

21 A. I think it was consistent with information gathered
22 from other states about their shelf periods.

23 Q. In connection with the change to signature petitions
24 in House Bill 1355, that occurred in 2011, there was no
25 additional investigation that you did in connection with that

1 change; is that right?

2 A. That's correct.

3 Q. Are you aware of any problems that have been created
4 as a result of the decrease in the amount of time that an
5 initiative petition signature is valid?

6 A. No.

7 Q. Are you familiar with amendment five and six to the
8 Florida Constitution relating to fair districts?

9 A. Yes.

10 Q. Can you briefly describe your familiarity with that?

11 A. Only that they change the way redistricting is
12 conducted, should be conducted.

13 Q. Did those provisions provide protection for minority
14 rights?

15 A. They may have. I don't know. We will find out.

16 Q. Do you recall whether the language that was included
17 in the constitution made reference to ensuring that minority
18 rights are protected in connection with the redistricting
19 process?

20 A. I don't recall what the specific language says.

21 Q. Are you aware of the length of time that it took to
22 collect initiative petition signatures to place amendments five
23 and six on the ballot?

24 A. I am not.

25 Q. With regard to amendments five and six, part of the

1 language of those amendments provides that "districts shall not
2 be drawn with the intent or result of denying or abridging the
3 equal opportunity of racial or language minorities to
4 participate in the political process or to diminish their
5 ability to elect representatives of their choice". Having
6 heard that, does that refresh your recollection at all with
7 regard to whether amendments five and six dealt with minority
8 rights?

9 A. Sounds like they do.

10 Q. Is it your understanding-- strike that.

11 Amendments five and six are fairly recent,
12 aren't they?

13 A. Yes.

14 Q. Do you recall roughly when they were placed on the
15 ballot? Just within what year?

16 A. 2010.

17 Q. I think I already asked you this, and if so I
18 apologize, I don't recall the answer. Do you recall whether
19 amendments five and six received sufficient signatures within
20 two years to be placed on the ballot?

21 A. I don't recall.

22 Q. I will represent to you that the first initiative
23 petition signature in connection with amendments five and six
24 was received more than two years prior to the date that those
25 amendments were placed on the ballot. Based on that, is it

1 your understanding that if amendments five and six were to come
2 up now, under the change to the initiative petition signature
3 shelf life occasioned by House Bill 1355, that amendments five
4 and six would not have qualified for the ballot?

5 A. I don't know if they would have qualified or not. If
6 certain petitions were thrown off, as the two year period
7 expired, I would assume the group would have to collect
8 additional signatures.

9 Q. Are you familiar with any other initiative
10 petitions-- strike that.

11 Are you familiar with any other initiative
12 petitions where the petition was placed on the ballot based on
13 signatures that were collected in a longer than a two year
14 period?

15 MR. THOMAS: Object to the form of the question.

16 A. I am not familiar, no. If you are asking me if I am
17 looking at any proposed amendment when I am changing this from
18 four to two years in the election bill, the answer is no.

19 BY MR. O'CONNOR:

20 Q. Okay. It's your testimony that this had been a
21 longstanding issue for the Florida Chamber of Commerce and that
22 when you were drafting the bill you thought it might as well be
23 included in the elections bill?

24 A. Yeah.

25 Q. Did you ever have any conversations with any

1 legislators or staff concerning the initiative shelf life
2 petition change?

3 A. Not specifically. I may have had a conversation with
4 Glenn Kirkland in the House about whether that provision was in
5 the bill, but nothing specific.

6 Q. Help me understand that conversation. You said may
7 have had a conversation with Glenn Kirkland about whether the
8 initiative signature petition change was in the bill.

9 A. He may have asked me. He may have said, is the
10 constitutional amendment shelf life change in the bill, and I
11 simply responded yes.

12 Q. I would like to turn back to the document that was
13 previously marked Mitchell Exhibit 4. This is the section by
14 section explanation of the draft language being circulated on
15 January 26. I would like to focus on the attachment in section
16 eight, which reads, "Provides that only a name change
17 affirmation may be completed and presented at the polling place
18 on the day of the election". Did I read that correctly?

19 A. Uh huh (Indicating in the affirmative).

20 Q. Does this relate to the change to election law that
21 was included in this draft bill related to people who change
22 their address and then attempt to update their address at a
23 polling place?

24 A. It may have been the same section. I don't know if
25 it's the same change though.

1 Q. why the hesitation there? were there other changes
2 to movers that were included in this draft bill?

3 A. I am looking at the explanation. It says a name
4 change. I think you could change your name at the polling
5 place under this change, but I don't know what else section
6 eight of the bill did.

7 Q. Okay. Do you recall--

8 A. This allows a name change.

9 Q. Do you recall whether this draft bill changed the
10 provision of Florida election law that allowed someone to
11 change either their name, or their address, at a polling place
12 and still vote a regular ballot? where the change here limited
13 that only to someone being able to change their name at a
14 polling place?

15 A. I don't recall. If there had been a change of
16 address that was permitted under this section I would have said
17 so. I think this just addresses the name change.

18 Q. I would like to have you turn to the fourth page of
19 this attachment. There is a reference to section 28, and the
20 description just says, "Provides an effective date". Do you
21 recall what the effective date was that was included in the
22 draft elections bill you prepared?

23 A. I think it was effective upon becoming a law. Didn't
24 have a specific date.

25 Q. why would you have drafted the bill such that it

1 would be effective upon becoming law?

2 A. I think there were provisions in Chapter 106 that we
3 wanted to have become effective as soon as possible. That's
4 fairly standard drafting procedure, unless there is specific
5 provisions that legislators or staff want to take effect at a
6 later date.

7 Q. How about with regard to elections bills? Are you
8 familiar with prior elections bills having an effective date
9 such that the bill becomes effective upon signing of the law?

10 A. That's fairly common for election bills. There will
11 be provisions that may have a delayed effective date, if you
12 will. There may be election provisions that a supervisor, or
13 the Department of State is afraid they can't implement in time
14 and they may make those changes in the legislative process.

15 Q. I would like to show you a document that we will mark
16 as Mitchell Exhibit 5. (Document shown to witness)

17 while you are taking a look at that, I will note
18 for the record this is an email from you dated February 3,
19 2011, to Kirk Pepper.

20 A. Uh huh (Indicating in the affirmative).

21 Q. Is that correct?

22 A. Yes.

23 Q. I would like to focus on the second page first and
24 work backwards through the email chain. The first email that
25 is listed here is also on February 3 from yourself to Jim

1 Rimes, Kirk Pepper, Frank Terraferma and Andy Palmer with a cc
2 to Ms. Fenner and Mr. Coates. It reads, "Just an FYI, I have
3 got the redistricting staff in the House looking at the
4 election reporting and census block language from the elections
5 bill. They are sending me some revisions soon".

6 Can you help me understand what you are saying
7 there?

8 A. I believe I had asked House redistricting staff to
9 come up with some language as to how they wanted supervisors to
10 report just what it says, census block information for
11 redistricting purposes, to help them in their redistricting. I
12 am not educated in the redistricting process, so I deferred
13 that to the House redistricting staff.

14 Q. Why in connection with preparing this draft bill did
15 you reach out to the House redistricting staff? What prompted
16 you to do that?

17 A. I knew, during the course of their constructing maps,
18 that there may be information that the supervisors weren't
19 providing, that they needed, supervisors of elections. I was
20 giving them an opportunity to add some language.

21 Q. Were you instructed by anyone to reach out to the
22 House redistricting staff in this way?

23 A. No.

24 Q. When we say House redistricting staff, who is that?

25 A. I believe it was probably Bob West, and Alex-- can't

1 recall his last name-- Alex Kelly. He was the staff director.

2 Q. And, with regard to the changes in the language that
3 they suggested, did they have anything to do with the four sets
4 of voting changes at issue here?

5 A. No.

6 Q. I would like to turn to the front page now and focus
7 on the email at the bottom, from Kirk Pepper to you. He writes
8 back, "I heard. That helps me immensely". Is he referring to
9 having heard about your reaching out to the House redistricting
10 staff?

11 A. I believe so, yes.

12 Q. And, do you have any knowledge as to how that helps
13 him immensely?

14 A. I don't.

15 Q. I would like to ask you about the top email, also
16 February 3, 2011. It's from you, and it reads, "I'm waiting to
17 hear back from Jenn Ungru on our third-party registration
18 language and I need to work on "registering at a new precinct
19 on election day/provisional ballot language. Monday?".

20 Did I read that correctly?

21 A. Right.

22 Q. Who is Jenn Ungru?

23 A. I don't really know her very well. I believe she has
24 done some political consulting in the past. She may work for
25 the Governor's office now.

1 Q. Do you recall what role she was working in at the
2 time you reference her here, February 2011?

3 A. I don't know what her exact position was, no.

4 Q. You said she was consulting in the past; was that
5 with any particular group?

6 A. I don't know.

7 Q. It sounds like you are not familiar with Ms. Ungru;
8 why were you waiting to hear back from her with regard to
9 third-party voter registration language?

10 A. I think maybe a conversation I had with Jim Rimes,
11 maybe it had come from Jenn Ungru that she wanted to make some
12 changes to third-party voter registration, which is the genesis
13 of that draft I originally came up with.

14 Q. Do you think Ms. Ungru may be the source for the
15 genesis for the changes to the third-party voter registration
16 changes that were set out in the draft we looked at earlier?

17 A. I had heard from Jim Rimes that maybe she had issues
18 she wanted to address in the current third-party voter
19 registration group law.

20 Q. What had you heard from Mr. Rimes?

21 A. Nothing specific.

22 Q. Just help me understand that then. Mr. Rimes
23 suggested to you that Ms. Ungru might have some changes to
24 third-party voter registration?

25 A. Yes.

1 Q. So you reached out to her?

2 A. I attempted to, yes.

3 Q. Did you ever hear anything back?

4 A. I did not.

5 Q. So you never received any feedback from Ms. Ungru
6 concerning the third-party changes?

7 A. No.

8 Q. In discussing that with Mr. Rimes, did he indicate
9 the substance of Ms. Ungru's potential changes to the
10 third-party voter registration?

11 A. He did not.

12 Q. Did you have any other contact with Ms. Ungru beyond
13 what we have just discussed?

14 A. I didn't. I attempted to call her a couple of times,
15 but I never got a return phone call.

16 Q. Just so I am clear, you don't have a sense as to
17 where she was working at the time, at this time February of
18 2011?

19 A. May have been in the Governor's office.

20 Q. Why do you say that?

21 A. I was under the impression she was working in the
22 Governor's office.

23 Q. Did you have any contact with anyone else in the
24 Governor's office concerning any of the four sets of voting
25 changes?

1 A. No.

2 Q. I would like to focus on the end of the sentence
3 where you state, "I need to work on registering at a new
4 precinct on election day/provisional ballot language". Can you
5 help me understand what that means?

6 A. I may have been referring to trying to address some
7 concerns that had arisen in committee meetings. I think they
8 would have had pre-session committee meetings at this point. I
9 don't know the timing, if the bill had been filed, or if I was
10 just changing the draft of the bill. I don't recall.

11 Q. So, you don't recall what specifically this refers
12 to?

13 A. No. I may have been trying to make sure that
14 whatever provisions in the new precinct language lined up with
15 the provisional ballot language that was current law.

16 Q. With regard to the new precinct language, is that
17 referencing someone who changes their address and then is
18 attempting to update their address at a polling place?

19 A. I think so, yes.

20 Q. I would like to have you take a look at document we
21 will mark as Mitchell Exhibit 6. (Document shown to witness)

22 while you are taking a look at that, I will
23 reference for the record it is a February 9, 2011, email from
24 you, Mr. Mitchell, again to a number of people; Jim Rimes, Joel
25 Springer, Andy Palmer, Frank Terraferma, Rich at Heffley and

1 Associates, Kirk Pepper, and then a copy to Ms. Fenner,
2 Mr. Coates, and Marc@lsifl.com.

3 Do you recall this email?

4 A. Yes.

5 Q. Let me confirm who all of the recipients are here.
6 Jim at Enwright Consulting, that's Mr. Rimes; is that correct?

7 A. Yes.

8 Q. Jspringer@rpof.org is Joel Springer; is that correct?

9 A. Correct.

10 Q. Andy Palmer is Andy Palmer?

11 A. Uh huh (Indicating in the affirmative).

12 Q. Frankt is Frank Terraferma?

13 A. Right.

14 Q. Who is Rich at Heffley Associates?

15 A. That's Rich Heffley, political consultant.

16 Q. In what areas does he typically consult?

17 A. Candidates, some constitutional amendments, local
18 issues.

19 Q. Does his consulting focus on any of the issues
20 relating to the four sets of voting changes?

21 A. No.

22 Q. Why is he included as a recipient of this email?

23 A. Generally because he is concerned about Chapter 106
24 changes in his work with candidates.

25 Q. So you have included him here to give him a heads-up

1 about the current draft of the bill, because it concerns some
2 changes to campaign finance in Chapter 106 election code?

3 A. Uh huh.

4 MR. THOMAS: Yes?

5 A. Yes.

6 BY MR. O'CONNOR:

7 Q. And kpepper, is that Mr. Kirk Pepper?

8 A. It is.

9 Q. And, in the cc line we see Ms. Fenner, and
10 Mr. Coates, those are the two individuals who work with you at
11 Coates Law Firm; is that right?

12 A. Uh huh (Indicating in the affirmative).

13 Q. Yes?

14 A. Yes.

15 Q. Who is the last person listed there?

16 A. Another political consultant, Marc Reichelderfer.

17 Q. Can you spell that last name?

18 A. I can try. R-e-i-c-h-e-l-d-e-r-f-e-r.

19 Q. You said he is a political consultant?

20 A. Yes.

21 Q. In what areas does he consult?

22 A. Primarily candidates; state, local, federal.

23 Q. Why is he cc'd?

24 A. For the same reason that Rich would have been cc'd;
25 he engages in this kind of work, and some of these changes

1 would have been important to him.

2 Q. You say some of these changes. Were any of the four
3 sets of voting changes that we are here today for relate to the
4 issues that Mr.-- I won't even pronounce it-- consult?

5 A. No.

6 Q. So, again his focus is on campaign finance in Chapter
7 106?

8 A. Correct. There are some changes that relate to
9 qualifying as a candidate, resign to run that he might have
10 been an interest in. Those are in other sections, but nothing
11 related to the four provisions.

12 Q. Okay. With regard to the body of the email you
13 write, "Attached is a new version of the elections bill", and
14 you list some notable changes. I would like to focus on number
15 five, which reads, "Force majeure/acts of God clause added for
16 third-party VR-groups -- no input from Jenn Ungru at this
17 point". Can you explain to me what you are communicating
18 there?

19 A. Yes. As best I recall, I probably had added the
20 force majeure language that was not in that original version
21 that you and I discussed earlier, placed that in the
22 third-party voter registration section.

23 Q. Do you recall why you did that?

24 A. I thought it was a good idea. I think there had been
25 some discussions of what a third-party group ought to be able

1 to do, if there is a fire, or a hurricane, or somehow
2 applications get damaged, in whatever period, 10 day period, 48
3 hour period, they ought to have some safe harbor within which
4 to turn in those applications if something happens to them
5 through no fault of their own.

6 Q. Is that a conclusion you came to on your own, or is
7 that something that was discussed with someone else?

8 A. No discussions with anybody. I knew it was part of
9 the old law, and thought it was a very worthwhile addition.

10 Q. You reference that you knew it was part of the old
11 law, and we discussed that before when we looked at the
12 original draft where the force majeure language has been
13 stricken.

14 A. Uh huh.

15 Q. Why was it removed in the original draft, but added
16 back in this draft?

17 A. I don't know why it wasn't in the earlier draft. I
18 don't recall anybody asking me to put it in this draft, other
19 than me doing it myself.

20 Q. There is reference here to "no input from Jenn Ungru
21 at this point"; help me understand what you are communicating
22 there.

23 A. I think I told you earlier that I tried to reach out
24 to her, and she may have had some issues with third-party voter
25 registration groups, and I was moving ahead. I hadn't heard

1 anything from her.

2 Q. When you say Ms. Ungru may have had some issues with
3 third-party voter registration groups, what are you referring
4 to?

5 A. Nothing specifically. I had heard word of mouth that
6 she might have some changes she wanted to make to the current
7 law.

8 Q. But you never actually spoke with Ms. Ungru with
9 regard to the third-party voter registration changes?

10 A. No.

11 Q. Do you have any information as to whether she spoke
12 to anyone else involved in the process in order to communicate
13 whatever issues she had with the third-party voter registration
14 changes?

15 A. I don't know.

16 Q. I would like to ask you about the next paragraph here
17 which I will read, "One item to noodle on- early voting. I
18 think if the SOE's had some additional flexibility with early
19 voting sites they could be easily sold on a shortened time
20 frame". Did I read that correctly?

21 A. You did.

22 Q. SOE, is supervisors of elections?

23 A. It is.

24 Q. Help me understand why you were making this
25 statement.

1 A. I think the supervisors over the years have wanted
2 more flexibility as to where they could locate their early
3 voting sites. I think at the same time too there are some
4 supervisors that wanted a shortened time frame for early
5 voting, and I was really trying to be a go-between here, and
6 suggest a possible solution. There are a number of supervisors
7 that really don't like the number of hours that are currently
8 provided. It's very expensive for them, and they don't get lot
9 of additional turn-out from early voting.

10 Q. was early voting-- were changes to early voting
11 included in any of the prior drafts that you had put together
12 for the 2011 legislative session?

13 A. No.

14 Q. why is early voting coming into the conversation now?

15 A. I don't recall, but it comes up every year.

16 Q. when you say--

17 A. So I am throwing it out for consideration.

18 Q. when you say it comes up every year, how so?

19 A. Typically the supervisors bring it up, some of the
20 larger county supervisors want more flexibility with regard to
21 the locations.

22 Q. Had you had any communications with anyone with
23 regard to this proposal or changes to early voting generally?

24 A. No.

25 Q. Do you recall receiving any response from any of the

1 recipients on this email with regard to this suggestion of
2 early voting?

3 A. No.

4 Q. I would like to ask you about the last paragraph
5 here, "We should try to get back together soon to discuss the
6 new bill and what will be done with affiliated/leadership
7 committees". Help me understand what that means.

8 A. That was simply a reminder to these folks that if
9 they wanted to do anything with affiliated party committees
10 they should be expecting to get back together in the new future
11 before session started.

12 Q. When you say affiliated party committees, what does
13 that refer to?

14 A. Committees within each party's structure where funds
15 would be placed to support House or Senate candidates.

16 Q. So those are not committees within the legislature?
17 These are outside groups?

18 A. Correct. within political party structure. It's a
19 Chapter 106 provision.

20 Q. With regard to the political party structure, is that
21 primarily the Republican Party of Florida and the Democratic
22 party?

23 A. Yes.

24 Q. So, is the suggestion here then to get together to
25 discuss how the political parties, the leadership of the

1 political parties will decide how to move forward on these
2 issues?

3 A. Yes.

4 MR. THOMAS: Object to the form of the question. You
5 say these issues. Are you talking about one through five,
6 or simply--

7 BY MR. O'CONNOR:

8 Q. Let me ask it again.

9 MR. THOMAS: I'm just trying to clarify.

10 MR. O'CONNOR: Sure.

11 A. I understood you to mean the leadership committees.

12 BY MR. O'CONNOR:

13 Q. With regard to the substance, I am interested in the
14 four sets of voting changes. So, is it your sense that at
15 least some of the four sets of voting changes would be
16 discussed with the affiliated/leadership committees to decide
17 how to move forward?

18 A. I am trying to think of the best way to answer. I
19 think we were attempting to get back together to discuss the
20 new bill. I don't recall at that point if this bill had any of
21 the four sets of voting changes in it. This is prior to the
22 session beginning, but I know we wanted to get together before
23 session began in March. This is three weeks out.

24 Q. Based on the documents that are attached to this, but
25 which I don't have a copy of here for you, the third-party

1 voter registration change is included; is that right?

2 A. It may in some form.

3 Q. Based on number five, talking about the force majeure
4 provision being added, would it be your conclusion that the
5 third-party voter registration change is here?

6 A. Yes. It's my understanding that we probably included
7 that section that we looked at earlier in the deposition, that
8 draft, and then I had added this force majeure clause.

9 Q. And we had looked at earlier in the summary, there
10 was a discussion of the constitutional initiative petition
11 signature shelf life being reduced from four years to two
12 years; would you expect that that change was still in this
13 draft?

14 A. I would.

15 Q. We discussed earlier there was a provision about name
16 changes at the polls. Do you expect that that provision was
17 still in this draft?

18 A. It may have been. I don't know.

19 Q. I would like to stick with the third-party voter
20 registration change, but jump ahead in time so hopefully we can
21 finish the third-party group and then move on to one of the
22 other substantive changes.

23 I would like to show you a document that we have
24 marked as Mitchell Exhibit 7. (Document shown to witness)

25 while you are taking a look at that, I will note

1 for the record that this is an email dated May 13, 2011, from
2 Jonathan Fox to Dawn Roberts, with a cc to Patricia Gosney and
3 Allison Fogt, F-o-g-t.

4 Have you seen this email before?

5 A. No.

6 Q. Do you know who these folks are?

7 A. I know Jonathan Fox and Dawn Roberts.

8 Q. Who is Jonathan Fox?

9 A. Jonathan Fox is an attorney with the Senate, I guess
10 it's now the Ethics and Elections subcommittee. At the time it
11 was I think Ethics and Elections Committee.

12 Q. How about Dawn Roberts?

13 A. She is also a Senate staffer, staff director, I
14 believe, for that committee.

15 Q. I would like to focus on the bottom email from Ms.
16 Gosney, and it appears to be a communication from Senator Diaz
17 de la Portilla, sending it to Jonathan Fox and Allison Fogt,
18 referencing what appears to be an article that was published
19 May 13, 2011, and communicating that Senator Diaz de la
20 Portilla would like a draft response so that he could review.
21 Do you see that?

22 A. Uh huh (Indicating in the affirmative).

23 Q. Is that your understanding of that first email?

24 A. What you have read to me, it is; yes.

25 Q. I would like to focus on Mr. Fox's response then in

1 the middle of the page. In the second paragraph Mr. Fox
2 writes, "This is something that you should probably run by Eric
3 Edwards in the Majority Office, as we weren't involved in the
4 substantive policy discussions with respect to early voting or
5 third party voter registration groups; neither Dawn, I suspect,
6 nor I, can offer much help on these fronts". Did I read that
7 correctly?

8 A. Uh huh.

9 Q. First, who is Eric Edwards?

10 A. He was a staffer in the Senate majority office.

11 Q. Can you help me understand Mr. Fox's statement that,
12 neither he nor Dawn Roberts were involved in the substantive
13 policy discussions with respect to third-party voter
14 registration groups?

15 A. I don't know what he is referring to there, other
16 than what it says on the paper.

17 Q. How do you read that, when he references third-party
18 voter registration groups?

19 A. The third-party voter registration changes that are
20 the issue here.

21 Q. So, it's your understanding he is referring to the
22 third-party voter registration changes occasioned by House Bill
23 1355?

24 A. Yes.

25 Q. And, that those are the changes that started as a

1 draft that you had prepared back in January of 2011?

2 A. Yeah.

3 Q. And, so it sounds from the email that he is saying he
4 wasn't involved in the substantive policy discussions regarding
5 those changes; is that how you read this?

6 A. That's how I read it.

7 Q. Did you ever have any substantive discussions with
8 Mr. Fox about the third-party voter registration changes?

9 A. No.

10 Q. Do you know why Mr. Fox is referring Ms. Gosney to
11 Eric Edwards in the majority office with regard to her question
12 in the first email?

13 A. I don't. Having worked for the House, it was
14 probably their procedure to refer people to the majority
15 office, for the Senate press office to contact with the press,
16 or help senators with contact with the press.

17 Q. With regard to the line concerning the substantive
18 policy discussions with respect to early voting, did you have
19 any substantive policy discussions with Mr. Fox concerning
20 early voting?

21 A. No.

22 Q. How about Ms. Roberts? Any substantive discussions
23 with her concerning early voting?

24 A. No.

25 Q. How about with her concerning the third-party voter

1 registration groups?

2 A. No.

3 Q. From the very top email, I want to have you give me
4 your take on that. It appears to be an email from Jonathan fox
5 stating that he just spoke with Allison in the majority office
6 who is preparing a response in Eric's absence. Is it your
7 understanding from that email that this is Allison Fogt, who is
8 copied here in the email, that she will be handling this
9 request?

10 A. I suppose so.

11 Q. Okay. I would like to have you take a look at what
12 will be marked as Mitchell Exhibit 8. (Document shown to
13 witness)

14 while you are taking a look at that, I will note
15 for the record that the top email in this chain is dated May
16 13, 2011, from Allison Fogt to Jonathan Fox.

17 Have you seen this email before?

18 A. No.

19 Q. I'd like to ask you about the first email in the
20 chain, which is May 13, 2011, dated at 1:06 pm, and the subject
21 is per our discussion. It lists some contact information for
22 Tidewater Consulting. Do you see that?

23 A. I do.

24 Q. What is Tidewater Consulting?

25 A. That's a separate lobbying company of which Richard

1 Coates is a member, and others.

2 Q. What is your affiliation with Tidewater Consulting?

3 A. I have none.

4 Q. Who are the other members of Tidewater Consulting?

5 A. I think presently the members are Richard Coates,
6 Noreen Fenner, and Shelly Green.

7 Q. Who is Shelly Green?

8 A. Works in the Tidewater office as one of the officers
9 of the company.

10 Q. What is her role or responsibility?

11 A. She is the secretary of the company, and I believe
12 the vice-president. She does some lobbying for various
13 clients.

14 Q. Is it fair to say Tidewater Consulting is a lobbying
15 shop?

16 A. Yes.

17 Q. Does Tidewater Consulting lobby on election law
18 issues?

19 A. No.

20 Q. Did Tidewater Consulting have any involvement with
21 the four sets of voting changes?

22 A. No.

23 Q. That's what I would like to have you help me
24 understand. If we look at Mitchell Exhibit 7, we have an email
25 at the top, Jonathan Fox, May 13, 2011 at 12:55 pm, and he

1 mentions he just spoke with Allison in the majority office, who
2 is preparing a response to Senator Diaz de la Portilla's
3 request in Eric's absence. Then I'd like to look at the next
4 email, Mitchell Exhibit 8, at bottom in the chain, May 13, at
5 1:06 from Jonathan Fox to Allison Fogt, "per our discussion",
6 and he sends contact information for Tidewater Consulting. Can
7 you help me understand why Mr. Fox is sending Ms. Fogt contact
8 information for Tidewater Consulting?

9 A. I don't know, unless it's related to another issue
10 they were lobbying on behalf of. I don't know.

11 Q. The phone number listed for Tidewater Consulting,
12 will that connect someone with either yourself or Mr. Coates?

13 A. No. It's a separate number. We are all housed in
14 the same building, but it's a separate number.

15 Q. Is it in the same general facility?

16 A. Uh huh (Indicating in the affirmative).

17 Q. Is there a centralized reception?

18 A. There is.

19 Q. Is the number that's listed here the number to the
20 central reception desk?

21 A. Yes.

22 Q. We have discussed your involvement in connection with
23 these changes thus far. We haven't spent much time discussing
24 Mr. Coates' involvement. What role did he play in connection
25 with the four sets of voting changes and the issues we have

1 been discussing?

2 A. None.

3 Q. Did you have any discussions with him?

4 A. No.

5 Q. Why not?

6 A. As I said previously, our primary concern was a
7 addressing some changes that we wanted to take place in Chapter
8 106.

9 Q. I appreciate that. Why does the fact that you were
10 primarily concerned with changes to Chapter 106 explain the
11 fact that you didn't have any communication with Mr. Coates?

12 A. Well, I had conversations with him about some of our
13 provisions in Chapter 106 that we wanted to change.

14 Q. But, with regard to the four sets of voting changes?

15 A. No conversations with Mr. Coates at all.

16 Q. Okay. Before we leave third-party voter registration
17 organization changes, is there any information or
18 communications with regard to that specific change that you are
19 aware of that we haven't discussed?

20 A. No.

21 Q. I would like to turn now to the change concerning
22 individuals who move and would like to update their address at
23 a polling place and vote at that polling place.

24 First of all, just so we are on the same page,
25 what is your understanding of the law in that regard following

1 the passage of House Bill 1355?

2 A. I haven't looked at it recently, but my understanding
3 is that if you want to change your address at the polling place
4 on election day, you are moving from outside the county, you
5 have to vote a provisional ballot.

6 Q. If a voter needs to change their address at a polling
7 place, and wants to vote a regular ballot, they can do so if
8 they are moving within a county, but if they have moved from a
9 different county, they must vote via provisional ballot?

10 A. Correct. That's my understanding.

11 Q. When did you have your first discussion with anyone
12 concerning the change that ultimately became the movers change
13 that we just discussed?

14 A. That's probably privileged.

15 Q. I am asking about when.

16 A. Probably back in October, November, 2010.

17 Q. Who was that conversation with?

18 A. RPOF staff.

19 Q. RPOF staff?

20 A. Republican Party staff.

21 Q. Who in particular?

22 A. It would have been with Andy Palmer, Frank Terraferma
23 and Joel Springer.

24 Q. Do you recall whether this conversation was in
25 person, over the phone, email?

1 A. In person.

2 Q. How many conversations did you have with RPOF staff
3 concerning the movers change?

4 A. Maybe two or three.

5 Q. Over what period of time?

6 A. Two months.

7 Q. Is that two to three conversations with RPOF staff
8 over the two months between October, November 2010 and
9 January 2011?

10 A. Yes.

11 Q. Beyond the Republican Party of Florida staff, that we
12 just discussed, did you have any communication with anyone else
13 concerning the change that ultimately became the inter-county
14 mover change that we were discussing?

15 A. I may have had some conversations with Glenn Kirkland
16 in the House about what was in the bill, preparing talking
17 points, what the actual language does or does not do.

18 Q. How many times did you speak with Mr. Kirkland about
19 the inter-county mover change?

20 A. Handful of times. I couldn't tell you how many. It
21 could have been five or six times.

22 Q. With regard to those conversations, you said that it
23 largely was about what was in the bill, what the language did
24 or did not do; were these in the communications in the
25 character of you explaining to him what the change was, and

1 what the affect would be?

2 A. what the change was, yes. That's exactly what was
3 going on, or preparing talking points for any of the members
4 about what the changes do. I don't specifically recall
5 preparing any talking points for the change of address
6 language.

7 Q. Okay. You said that you were explaining what the
8 change was; is that because the change was something that you
9 had drafted, and so you were in the best position to explain to
10 him what that change entailed?

11 A. I think they were looking to me in the context of all
12 of the election changes, just as a source. I don't think they
13 looked to me as someone that could better explain the change of
14 address changes. I was asked to explain all of the changes in
15 the bill from time to time.

16 Q. Is the reason you were asked because you had prepared
17 the draft language of those changes?

18 A. Sure, yes.

19 Q. So following-- well, back-up.

20 You ultimately prepared draft the language that
21 went into the election bill that related to changes of address
22 at polling places; is that right?

23 A. Yes.

24 Q. Was that prepared as a result of your conversations
25 with the RPOF staff that we discussed a moment ago?

1 A. I believe so.

2 Q. And, what did you use as the basis for the changes
3 that ultimately went into the draft language you prepared?

4 A. Conversations with RPOF staff.

5 Q. Were there any materials that were provided to you?

6 A. No.

7 Q. So, discussions with RPOF staff with regard to that
8 change formed the basis of the draft language that you
9 prepared?

10 A. That's correct.

11 Q. Beyond members of the legislature, or their staff, or
12 RPOF staff, what other third parties did you discuss the
13 inter-county mover change with?

14 A. None.

15 Q. Did you have any discussions with supervisors of
16 elections?

17 A. I take that back. I did have discussions with
18 supervisors, yes.

19 Q. What discussions with supervisors did you have?

20 A. I had called a few supervisors to find out how common
21 an occurrence it was to have people change their address on
22 election day.

23 Q. When did those calls occur?

24 A. Probably in January, February of 2011. Maybe into
25 March when the session began.

1 Q. which supervisors did you call?

2 A. I probably spoke with David Stafford. I believe at
3 the time he was the legislative liaison for the supervisors
4 association. I believe I spoke with the Pinellas County
5 supervisor. I may have talked to Bill Cowles, the Orange
6 County supervisor. That may have been it.

7 Q. You said the Pinellas County supervisor, what is his
8 or her name?

9 A. It's her. It escapes me.

10 Q. Is it Deb Clark?

11 A. Deb Clark. Thank you.

12 Q. Let's start with Mr. Stafford. You referenced him as
13 someone you had spoken with. what do you recall from your
14 conversation with Mr. Stafford?

15 A. I don't recall the conversation with Mr. Stafford.

16 Q. No recollection of it?

17 A. No. I just recall talking to him because he was the
18 contact point for the supervisors.

19 Q. what do you recall of your conversation with Bill
20 Cowles, the Orange County supervisor?

21 A. Not much.

22 Q. what do you recall?

23 A. I don't recall anything.

24 Q. what do you recall from your conversation with Deb
25 Clark?

1 A. I think she-- I am trying to recall exactly what she
2 told me. I believe she had taken the position that there
3 weren't that many changes taking place. She had a process in
4 place, and I believe she was giving them provisional ballots
5 for those that were changing their address on election day, but
6 I don't recall without looking at the notes.

7 Q. Do you recall there were notes of this conversation?

8 A. Yes.

9 Q. Let me show you what we will be marked as Mitchell
10 Exhibit 9. (Document shown to witness)

11 Mr. Mitchell, do you recall this document?

12 A. Yes.

13 Q. What is it?

14 A. It's notes memorializing a conversation I had with
15 Deb Clark on February 10, 2011.

16 Q. Who prepared these notes?

17 A. I did.

18 Q. You said these notes memorialized a conversation you
19 had on February 10, 2011 with Pinellas County Supervisor of
20 Elections Deb Clark?

21 A. Right.

22 Q. Looking over these notes, does this refresh your
23 recollection with regard to what was discussed with Ms. Clark?

24 A. To some degree. I need to read through them.

25 Q. Why don't you take a quick look and tell me what you

1 recall from the conversation.

2 A. This was my note taking, I guess, after speaking with
3 her-- really during the conversation with Deb, about how she
4 handles people that want to change their address on election
5 day.

6 Q. This is obviously prior to the passage of House Bill
7 1355, so this is the status quo under the old law; is that
8 right?

9 A. This is the way that Deb Clark, the supervisor in
10 Pinellas County handles it, yes.

11 Q. Is it your understanding, from reading through these
12 notes, that if someone came to a polling place and wanted to
13 change their address, that they would be allowed to do so by
14 filling out a form and then vote that day via regular ballot?

15 A. This is the process again that Pinellas County uses;
16 correct.

17 Q. Why did you reach out to Ms. Clark to have this
18 discussion?

19 A. If I recall, I don't know if it was Bill Cowles or
20 David Stafford suggested I contact Deb because, as you will
21 note down there three-quarters of the way down, she has a
22 liberal policy about issuing provisional ballots, so I wanted
23 to talk to her and find out if the way she processes these
24 changes of addresses is different than my understanding of the
25 law.

1 Q. Having talked to her, what was your conclusion?

2 A. The process looks fine. It looks to me like she
3 would commonly issue a provisional ballot if she was uncertain
4 about someone's address. Of course, the change of address
5 presumes, in item number one, that the precinct clerk is able
6 to contact the supervisor's office to confirm that the person
7 is indeed a registered voter in the State database.

8 Q. If that person is able to confirm that the voter is
9 registered, then they are allowed to go through this process,
10 change their address, and vote?

11 A. Right. I think I also talked to her-- down here at
12 the bottom-- about returning absentee ballot requests where
13 they would be available to voters for two general election
14 cycles, rather than one election cycle.

15 Q. What role did the information that you learned from
16 Ms. Clark play in connection with your drafting of the change
17 that ultimately became the inter-county mover change of House
18 Bill 1355?

19 A. I don't know if it had much effect at all. I really
20 wanted to familiarize myself with how the process works down in
21 the trenches with the supervisor. It may have had some bearing
22 on the issuance of a provisional ballot in case someone
23 couldn't reach the supervisor's office to determine that that
24 person was indeed a registered voter in the database. But,
25 other than that, just familiarizing myself with the process.

1 MR. O'CONNOR: Let's go off the record.

2 whereupon, a recess was taken at 11:52.

3 Testimony resumed at 11:59.

4 BY MR. O'CONNOR:

5 Q. We are back on the record.

6 Mr. Mitchell, over the break did anything occur
7 to you that needed to be added to supplement or correct any of
8 your prior testimony?

9 A. No.

10 Q. I would like to ask you more about the change with
11 regard to individuals who move and want to update their address
12 at a polling place. For shorthand, I will refer to it as the
13 movers change; is that fair?

14 A. Sure.

15 Q. As you originally drafted it, how broad was that
16 change? who would have been affected by it?

17 A. I think the initial draft may have included anybody
18 that wanted to change their address within the county, or
19 outside of the county on election day.

20 Q. So, it was anyone who had changed address but hadn't
21 updated it--

22 A. I believe, yeah.

23 Q. It didn't distinguish between people who moved inside
24 a county versus between counties?

25 A. I don't think it did.

1 Q. Do you know why the change was originally drafted to
2 cover anyone who moved but tried to update their address at a
3 polling place?

4 A. I don't know. I don't know why we didn't make a
5 distinction.

6 Q. I think your answer suggests subsequently there was a
7 distinction made?

8 A. Apparently so. Yes.

9 Q. What is the distinction?

10 A. I think the distinction, and the way the bill finally
11 came out, was that those voters that had come into the county
12 from outside a county could not change their address on
13 election day without voting a provisional ballot.

14 Q. Why was that change made?

15 A. I don't know.

16 Q. Is that something you made the change of, during your
17 drafting process?

18 A. I don't recall.

19 Q. Do you recall having any discussions with anyone
20 about whether the change should apply to anyone who moves,
21 regardless of whether it's inside or between counties, versus
22 just those who move between counties?

23 A. I don't.

24 Q. So, no recollection of any conversations about why
25 the change was limited from everybody who moves to just people

1 who move between counties?

2 A. No.

3 Q. what was the purpose of the change as it was
4 originally drafted, where it applied to anyone who had moved
5 and tried to change their address at a polling place?

6 A. I think I will invoke the privilege there.

7 Q. what is the basis for that?

8 A. I mean I think the intent probably came from
9 attorney/client privileged conversations.

10 Q. Communications with whom?

11 A. Republican Party staff.

12 Q. During the drafting process with regard to the movers
13 change, were you aware of any instances of any voters in
14 Florida voting twice in a single election?

15 A. Not specifically, no.

16 Q. That type of election fraud has been referred to as
17 double voting, where a single elector cast a ballot, two
18 ballots in a single election. Are you familiar with that term,
19 double voting?

20 A. Yes.

21 Q. Is that consistent then-- you were not aware of any
22 instances of double voting in Florida at the time you were
23 drafting the movers language for House Bill 1355?

24 A. Not specifically, no.

25 Q. Were you aware of any other types of fraud or

1 misconduct by voters who moved and attempted to update their
2 address at a polling place and vote that same day?

3 A. No.

4 Q. Are you familiar with the Florida Voter Registration
5 System?

6 A. To some degree, yes.

7 Q. Can you briefly describe what that is?

8 A. I mean, it's a state-wide database that contains
9 registered voters in Florida. It's put together and held by
10 the Department of State, with information that's provided to
11 the Department from supervisors of elections, and their voter
12 registration roles.

13 Q. It is every one in the State of Florida that's
14 registered to vote?

15 A. Correct.

16 Q. Is it your view that the FVRS system is a fairly
17 robust system?

18 A. Yes.

19 Q. Is it your understanding that the FVRS system can
20 track a voter, such that if there were any instances of a voter
21 voting more than once in a single election, it could detect
22 that type of fraud?

23 A. I think it's probably designed to do that. I don't
24 know if it does.

25 Q. You think it's designed to do that, while you may not

1 be a 100 percent certain you would expect that detection of
2 double voting is one of its capabilities?

3 MR. THOMAS: Object to the form of the question.

4 A. I think if it's used, it's a tool that a supervisor
5 or an election official could use to determine if somebody is
6 registered to vote in Florida. Whether it's used on election
7 day on the chaos of conducting an election, I can't tell you
8 from county to county.

9 BY MR. O'CONNOR:

10 Q. Prior to House Bill 1355, under the old law, it's my
11 understanding that a voter could appear at a polling place,
12 change their address, and vote a regular ballot; is that
13 correct?

14 A. Yes.

15 Q. Do you know how long that had been the law in the
16 State of Florida?

17 A. I don't.

18 Q. Is it your view that that had been the law for quite
19 some time?

20 A. It is.

21 Q. Do you have a sense generally whether it's 40 years,
22 or so?

23 A. I have heard it's been a long time, but I have never
24 seen how long.

25 Q. Decades?

1 A. Perhaps, yes.

2 Q. Comparing the draft language you had prepared
3 concerning the movers change, which would have prevented anyone
4 who changed their address at a polling place from voting via
5 regular ballot, to the final language, we have discussed one
6 change where an intra-county mover would be excluded and would
7 be permitted to vote a regular ballot, while an inter-county
8 mover would not; is that right?

9 A. Right.

10 Q. Is there a distinction made with regards to members
11 of the military?

12 A. I believe in the final version of the bill there was,
13 yes.

14 Q. And, what can you tell me about the source of that
15 change?

16 A. Very little. All I know, I think it originated from
17 the Senate, and that's the extent of my knowledge.

18 Q. Is it fair to say you didn't have any involvement in
19 the distinction between members of the military who move
20 between counties, but are never the less permitted to update
21 their address at a polling place and vote a regular ballot?

22 A. That's correct.

23 Q. You said it came from the Senate? Can you help me
24 understand that a little bit?

25 A. I believe it was something that-- and I am just

1 recalling, I don't know specifically who had an interest in it,
2 but I think it was a senator that had an interest in providing
3 an exception for military voters.

4 Q. Do you know why that exception was limited to
5 military voters?

6 A. I don't.

7 Q. Do you know that exception was not expanded to
8 include college students, for example?

9 A. No.

10 Q. With regard to the movers change, had you heard
11 during the time from January 2011, until May of 2011, when
12 House Bill 1355 was passed, any concerns with regard to the
13 movers change?

14 A. Yes.

15 Q. What concerns did you hear?

16 A. That the bill changed a decade-long procedure, and a
17 lot of supervisors were opposed to it.

18 Q. Why were the supervisors opposed to it?

19 A. I would have to speculate, I don't know. So many of
20 the changes that are made in election bills are opposed because
21 they are a change in the way they have to do business. I don't
22 know.

23 Q. Did you have any direct communication with any
24 supervisors concerning the movers change?

25 A. After the bill was passed?

1 Q. Let's focus on the time from January 2011, up until
2 it was passed.

3 A. I don't think I had any direct conversations with the
4 supervisors. I may have responded to some comments that they
5 made at committee meetings, but, no, I didn't have any direct
6 conversation.

7 Q. You just said that you responded to comments at
8 committee meetings. What were you referring to there?

9 A. I think you have the document. I provided it. House
10 staff asked me to respond to comments that were made by
11 supervisor of elections through their association. I believe
12 it was after a House floor debate, or after a House committee
13 meeting. I don't recall the context.

14 Q. When you were responding to the supervisors'
15 concerns, was that based on concerns as communicated to you
16 through a document?

17 A. Yes.

18 Q. So there weren't any face-to-face, or over the phone
19 communications with supervisors?

20 A. No.

21 Q. I would like to have you take a look at a document
22 that we will mark as Mitchell Exhibit 10. (Document shown to
23 witness)

24 Mr. Mitchell, have you seen this document
25 before?

1 A. I don't think so.

2 Q. For the record, I will note that it is an email dated
3 April 1, 2011, sent on behalf of Nancy Watkins to a number of
4 individuals, with the subject of legislative update. I will
5 note that the email is signed Ron, and that the final person in
6 the to line is Ron Labasky.

7 Mr. Mitchell, do you know who sent this email?

8 A. Looks like Nancy Watkins sent it.

9 Q. Do you know who Ms. Watkins is?

10 A. She is Ron Labasky's assistant, or was at the time.

11 Q. Who is Ron?

12 A. He is the general counsel and lobbyist for the State
13 Association of Supervisors of Elections.

14 Q. Does this email appear to be sent by Ms. Watkins on
15 behalf of Mr. Labasky, to supervisors of elections?

16 A. It looks like it.

17 Q. Okay. In the first line of the email it makes
18 reference to "HB1355 by Rep. Baxley was heard in the House
19 Government Operations Subcommittee today. As we advised, a PCS
20 for HB1355 was made available yesterday morning. The bill
21 expanded from 14 pages to 128 pages. We were aware beforehand
22 that the bill would be substantially amended from a variety of
23 sources. We have been working with staff, the sponsor and
24 chair". Did I read that correctly?

25 A. You did.

1 Q. First of all, with regard to Representative Baxley,
2 is it your understanding that Representative Baxley was the
3 sponsor of House Bill 1355?

4 A. Yes.

5 Q. Do you have any information as how to Representative
6 Baxley came to be the sponsor of that bill?

7 A. I don't.

8 Q. There is reference to the bill expanding from 14
9 pages to 128 pages. You had made reference before to the bill
10 as initially filed being relatively small, and then expanding.
11 Is this consistent with your experience concerning House Bill
12 1355?

13 A. It is.

14 Q. Is it also consistent that around April 1, in
15 connection with this House Government Operations Subcommittee,
16 that's where this first expansion of the bill occurred?

17 A. Must be, yes.

18 Q. In the next paragraph, Mr. Labasky notes that the
19 supervisors had presented our concerns on the bill, and then
20 the last line of the second paragraph reads, "I, along with Ion
21 Sancho, pointed out that the amendment to Section 101.045,
22 dealing with changes of address and names at the polling place,
23 is poor policy and legally improper". Did I read that
24 correctly?

25 A. Yes.

1 Q. Who is Ion Sancho?

2 A. He is the supervisor of elections for Leon County.

3 Q. The change that's referenced here, concerning Section
4 101.045, dealing with changes of address and names at the
5 polling place, is that the movers change that we have been
6 discussing?

7 A. I think it is.

8 Q. Do you know why Mr. Labasky states that the change is
9 poor policy and legally improper?

10 A. I don't.

11 Q. I would like to have you now take a look at what we
12 will mark as Mitchell Exhibit 11. (Document shown to witness)

13 Mr. Mitchell, have you seen this document
14 before?

15 A. Yes.

16 Q. What is it?

17 A. Looks like concerns that the supervisors of elections
18 have as a body, with the election bill, House Bill 1355.

19 Q. Does this appear to be a copy of that document that
20 you produced in the response to our document subpoena?

21 A. No. These are comments and concerns that the
22 supervisors have. Those are my notes in the margins.

23 Q. That's what I was getting to. This specific copy of
24 that document, is this one you produced to us?

25 A. Yes.

1 Q. Just so we are clear, the document, for the record,
2 is a statement presumably from the Florida State Association of
3 Supervisors of Elections, dated April 6, 2011, concerning
4 committee substitute for HB1355, and it includes notes in the
5 margin, and those are your handwritten notes?

6 A. Yes.

7 Q. How did you come to receive this document?

8 A. I believe someone from the House, the Florida House
9 staff probably sent it to me. May have been Glenn Kirkland.

10 Q. Why would Mr. Kirkland send it to you?

11 A. To get my feedback, and see if there were changes
12 that the supervisors opposed that we could live with, maybe
13 changing to be consistent with what they would like to do.

14 Q. So walk me through what you did when you received the
15 document.

16 A. I think I read through each one of these sections
17 that the supervisors had an issue with, and simply made some
18 notes as to whether we could live with the change they were
19 suggesting, modify the change, or stay with the current law or
20 the current proposal in 1355.

21 Q. I would like to go through each of the sections that
22 are listed. Section one, is it fair to summarize that section
23 as providing additional authority to the Secretary of State to
24 issue directives to the supervisors of elections?

25 A. Right.

1 Q. And, is that a provision that was included in the
2 draft elections legislation that you had prepared?

3 A. I think it was, yes.

4 Q. And, then on the right side there is a note that I
5 believe reads, "okay to delete. This is Joel's".

6 A. Right.

7 Q. Is that what you wrote there?

8 A. I did.

9 Q. When you said this is Joel's, who are you referring
10 to?

11 A. Joel Springer.

12 Q. Joel Springer is with the Republican Party of
13 Florida?

14 A. Uh huh (Indicating in the affirmative).

15 Q. He is the campaign director for--

16 A. Senate campaigns.

17 Q. So, your note here, is that memorializing the fact
18 that this change is something that Joel Springer had requested?

19 A. Probably, yes.

20 Q. Why did you write okay to delete?

21 A. I felt like it was okay to delete this language from
22 the bill.

23 Q. Why did you feel that way?

24 A. I don't recall. I mean I know it's an issue that's
25 come up several times. I don't recall.

1 Q. Okay. With regard to section four, does that relate
2 to third-party voter registration changes?

3 A. Let me read through it real quick. I think the
4 supervisors really just had an issue with the maintenance of a
5 third-party voter registration database on the county level,
6 and wanted to remove that provision of the bill, and I just
7 made a note "could potentially delete".

8 Q. So this comment relates to the third-party voter
9 registration change that was in the draft bill?

10 A. Just the database, the supervisors' maintenance of a
11 database; correct.

12 Q. Why did you write could potentially delete?

13 A. I tended to agree with the supervisors. I think they
14 said maintenance of a separate database by the supervisors
15 appears to be an unnecessary and unknown cost. I agreed with
16 that.

17 Q. Sections 10 and 19, I don't believe relate to any of
18 the four sets of voting changes. Is that your understanding?

19 A. That's correct; 10 and 19 don't have anything to do
20 with the four changes.

21 Q. Let's move on to section 21. Does this section
22 relate to the movers change that we have been talking about?

23 A. It does.

24 Q. I would like to read the language that was included
25 from the FSASE, for the record. "This removes the ability of a

1 voter to change their address or name at the polling place.
2 This will result in tens of thousands of additional provisional
3 ballots, which are required to be canvassed by noon on the 3rd
4 (primary) or 4th (general) day after the election, and
5 significant delays at the polls. There are no reports of
6 widespread abuse or double voting". Did I read that correctly?

7 A. You did.

8 Q. You read this concern from the supervisors of
9 elections?

10 A. Uh huh (Indicating in the affirmative).

11 Q. What was your reaction to it?

12 A. I think I just put a note here, "provide any evidence
13 of double voting", question mark.

14 Q. And what is the significance, why did you write that
15 note?

16 A. I think that was just a statement made by the
17 supervisors, and I didn't know if it was true or not.

18 Q. I guess we had talked before as to whether you had
19 heard of, or were aware of any instances of double voting at
20 the time you were going through this legislative process, and I
21 believe you testified you weren't; is that correct?

22 A. Not specifically, no.

23 Q. Why the reference to Leon County?

24 A. I think I had heard there may have been some problems
25 in Leon County. I don't recall where. It may have been

1 something I read. People voting absentee and outside county,
2 and then voting on election day in Leon County.

3 Q. Do you recall anything more about that?

4 A. No.

5 Q. Is it your understanding that supervisors were
6 concerned that if the movers change were implemented, that
7 there would be thousands of additional provisional ballots that
8 would have to be canvassed in connection with an election?

9 A. That was their concern, yes.

10 Q. So, having read through the document, and made the
11 notes, what did you then do with the information that was both
12 contained in the document from the FSASE, plus your notes?

13 A. I think I probably formalized my notes or thoughts
14 and comments, and sent them back to Glenn Kirkland.

15 Q. Did you revise any of the draft language concerning
16 the movers change in response to these concerns?

17 A. I don't think I did.

18 Q. I would like to show you now a document we will mark
19 as Mitchell Exhibit 12. (Document shown to witness)

20 Mr. Mitchell, have you seen this document
21 before?

22 A. Yes.

23 Q. What is this document?

24 A. This may be the typed up comments that I referenced
25 with regard to the previous exhibit.

1 Q. So just I am clear, is it your understanding this
2 document includes your notes and comments based on your review
3 of the document that was marked as Mitchell Exhibit 11, but in
4 a formal form?

5 A. Yes.

6 Q. Does this document include both your comments as well
7 someone else's comments?

8 A. It appears so, yes.

9 Q. Who is the other person?

10 A. Frank T.

11 Q. Who is Frank T?

12 A. Frank Terraferma.

13 Q. He is with the Republican Party of Florida?

14 A. He is.

15 Q. The document suggests that Frank T's comments are
16 highlighted?

17 A. Uh huh (Indicating in the affirmative).

18 Q. The copy is a little difficult to see, but is it your
19 understanding that there are-- there is an entry that reads
20 section one, and it has some text, and then below that there
21 appears to be some, what used to be highlighted, and now is a
22 little grayed out, text.

23 A. Right.

24 Q. Is it your understanding that that first section is
25 your comment, and the section immediately below it is

1 Mr. Terraferma's comment?

2 A. I think that's connect, yes.

3 Q. So with regard to section one, that's consistent with
4 the notes that we saw on the prior exhibit where you believe
5 that Joel was the source of that change, that could be deleted
6 as an accommodation?

7 A. Uh huh (Indicating in the affirmative).

8 Q. Is that a yes?

9 A. Yes.

10 Q. I would like to ask you about Mr. Terraferma's
11 comments in that next paragraph at the end, he writes, "I am
12 not for removing this. We need a uniform election code with
13 uniform implementation across all 67 counties". Did I read
14 that correctly?

15 A. Yes.

16 Q. What do you understand Mr. Terraferma to be saying
17 there?

18 A. That the election code needs to be applied uniformly
19 across counties. There are 67 counties in Florida, and some
20 from time to time do things they want to do, and don't tend to
21 follow the election code.

22 Q. Was it his view that all 67 counties in Florida
23 should apply the same election laws?

24 A. Yes.

25 Q. Do you share that view?

1 A. Yes.

2 Q. Is the reason you have that view because it's
3 problematic if different counties are applying different
4 election laws?

5 A. Correct.

6 Q. What is the problem?

7 A. What is the problem?

8 Q. With different counties in Florida applying different
9 election laws?

10 A. I think you don't want to have election laws applied
11 differently from county to county. I think you get into legal
12 concerns when you do that, if voters are treated differently
13 from one county to the next. I think that's all he is alluding
14 to.

15 Q. Let's focus on section four. Is it correct to
16 conclude that section four and the text that follows it, that's
17 your comment, except for the final piece at the end which
18 reads, "Concur-- this was a Joel issue".

19 A. Yes.

20 Q. Do you understand that statement to mean that Frank
21 Terraferma is asserting that the third-party database, that the
22 supervisors were concerned about, is an issue that Joel
23 Springer had desired?

24 A. It looks like it, yes.

25 Q. I would like to look at the section that begins

1 section 21, and I would like to read for the record that
2 paragraph. Before I do, can you confirm which text is yours
3 versus which text is that of Mr. Terraferma?

4 A. Okay.

5 Q. Is it correct that everything in the paragraph that
6 begins section 21 is your language, up until 2010 in the second
7 to last line, and that the next four or five words are
8 Mr. Terraferma's?

9 A. Where do you want to say that Mr. Terraferma's
10 language begins?

11 Q. I am asking you, but I think, from looking at it,
12 that Mr. Terraferma's language is "Concur as anti fraud
13 measure"?

14 A. Yeah; I can barely make that out, but that looks like
15 his-- yeah.

16 Q. Is it your understanding that everything else is what
17 you had written?

18 A. Uh huh (Indicating in the affirmative). Yes.

19 Q. Okay. At the beginning of that paragraph it reads,
20 "Section 21. This was an issue that Joel really wanted to
21 retain. I would suggest we try to come up with at least some
22 anecdotal evidence that there was abuse or double voting. I
23 seem to recall that Leon County and some FAMU students were
24 mentioned". Did I read that correctly?

25 A. Yes.

1 Q. Can you explain the statement, "This was an issue
2 that Joel really wanted to retain"?

3 A. I can't.

4 Q. First of all, who is Joel?

5 A. Joel Springer.

6 Q. Is it your view, from this, that that provision,
7 section 21, is an issue that Joel Springer wanted in the draft
8 legislation?

9 A. Yes.

10 Q. Do you know why he wanted it in there?

11 A. I think that's privileged.

12 Q. First of all, I'm interested in whether you know why
13 he did it?

14 A. I believe I do, yes.

15 Q. Okay. And, is it your position that the substantive
16 reason why Joel Springer wanted this change is privileged?

17 A. Yes.

18 Q. And, what is the basis for that?

19 A. Conversations with my client.

20 Q. Next line, "I would suggest we try to come up with at
21 least some anecdotal evidence that there was abuse or double
22 voting". Can you explain that to me?

23 A. Sure. This is in the context, I believe the bill has
24 gone through a committee meeting or two, and I am putting on my
25 former House representative staff hat here, and suggest that if

1 you have gotten questions at the committee level, you are going
2 to get them again on the floor, and you need to come up with
3 some kind of evidence when you get these questions again.

4 Q. So you were suggesting that the proponents of this
5 bill should come up with some anecdotal evidence to support why
6 this change is appropriate?

7 A. Right.

8 Q. To confirm, you weren't aware of any evidence that
9 would support the change at the time this was drafted, or the
10 time this was going through the legislature; is that right?

11 A. Correct.

12 Q. I would like to ask you about the reference to Leon
13 County and some FAMU students. Can you explain what you were
14 mentioning, or why you referenced that here?

15 A. I am going back to maybe reading something in the
16 newspaper that alleged that there were students who had voted
17 absentee in their home county, and then attempted to vote in
18 Leon County on election day as well.

19 Q. Do you recall whether the individuals that you
20 reference there were able to vote twice in that election?

21 A. I don't know.

22 Q. I would like to ask about Mr. Terraferma's comment at
23 the end of the paragraph, "Concur, as anti fraud measure". Can
24 you help me understand what Mr. Terraferma is saying there?

25 A. I don't know specifically what he was thinking of.

1 My guess is that, the reality is if the supervisor can't
2 determine whether someone is registered to vote in Florida on
3 election day, that we don't want to have people vote on
4 election day if we can't confirm that they voted absentee
5 elsewhere.

6 Q. I would like to have you take a look at a document we
7 will mark as Mitchell Exhibit 13. (Document shown to witness)

8 while you are taking a look at that I will note
9 for the record this is a document that is titled SOE
10 concerns/response. Do you recognize this document?

11 A. I do.

12 Q. What is it?

13 A. I believe it's a document that Glenn Kirkland
14 prepared and sent out to me.

15 Q. Before we get to the substance, is this a document
16 that was located in your files and produced pursuant to our
17 subpoena?

18 A. It was.

19 Q. And, you said Mr. Kirk prepared and sent it to you.
20 Why was Mr. Kirkland preparing this document?

21 A. I think he was sending it to us so we would provide
22 feedback to him after the supervisors had provided feedback to
23 him.

24 Q. Help me understand the document. Under the initial
25 title there is a parenthetical, and it lists what appears to be

1 initials and then names. Is it correct that throughout this
2 document AP is the initials for Andy Palmer?

3 A. Correct.

4 Q. And EM is the initials for yourself, Mr. Mitchell?

5 A. Yes.

6 Q. And FT is the initials for Frank Terraferma?

7 A. Correct.

8 Q. And, throughout this document, to the extent there is
9 a parenthetical with a set of initials, does that indicate to
10 you that that individual was the source of those comments?

11 A. Yes.

12 Q. I would like to ask you about a couple of sections
13 here, and understand the progression of the documents. First
14 of all, do you know the date of this document?

15 A. I don't.

16 Q. Does it appear to you it would be dated after the
17 document we just looked at as Mitchell Exhibit 12?

18 A. Probably so. It looks like there is a reference on
19 the back of this document to general comments on the PCS, which
20 is the proposed committee substitute. I would imagine this had
21 come out after at least one committee hearing on the bill.

22 Q. So you think roughly this is early to mid April 2011?

23 A. That would be fair to say.

24 Q. With regard to section one, I think we talked about
25 that before; that was the provision in your draft bill that

1 provided the Secretary of State additional power to issue
2 directives to supervisors of elections; is that right?

3 A. Yes.

4 Q. I am interested in the comment at the end of the
5 first paragraph that reads, "Aside: Secretary of State has said
6 this could be dropped". Did I read that correctly?

7 A. Yes.

8 Q. Can you help me understand what that means?

9 A. I think that-- I can't put thoughts into Glenn
10 Kirkland's head, but I assume he has reached out to the
11 Secretary of State's office and they are in agreement that that
12 section can be dropped.

13 Q. Is it your understanding that the comment in the
14 first paragraph there is Mr. Kirkland's statements?

15 A. I think the language and right after the word section
16 one is probably a summary of the supervisors' concerns.

17 Q. Do you know who prepared that summary?

18 A. I don't.

19 Q. With regard to the "aside", is it your view that's
20 Mr. Kirkland's language?

21 A. I believe it is.

22 Q. You believe Mr. Kirkland had discussions with the
23 Secretary of State with regard to whether this provision was
24 necessary or could be dropped?

25 A. Yes.

1 Q. Do you know whether it was ultimately included in the
2 final version of House Bill 1355?

3 A. I don't believe it was.

4 Q. I would like to look below section one, there is RPOF
5 and then (AP), and then some additional text; why is
6 Mr. Palmer's initials preceded by RPOF?

7 A. I guess he is providing input on behalf of the RPOF
8 acting as the executive director of the RPOF.

9 Q. Your initials here, and then Mr. Terraferma's
10 initials are as well. In what capacity are you acting in
11 providing your comments?

12 A. Here I am acting as a former House staffer that's
13 familiar with the election bills.

14 Q. Are you also acting in your capacity as counsel for
15 the Republican Party of Florida in providing these comments?

16 A. Yes.

17 Q. How about with regard to Mr. Terraferma, what
18 capacity is he acting when he offers his comments?

19 A. I don't know.

20 Q. You don't know what capacity--

21 A. I don't know how he is acting, no.

22 Q. Why do you think his comments are included here?

23 A. I mean, I think he is asked, as a staffer of the RPOF
24 perhaps, but I don't know why he is being asked.

25 Q. There were a number of references to Joel Springer.

1 why has Mr. Springer not been asked to provide comments that
2 are included in the document?

3 A. I don't know.

4 Q. Is it your view that Mr. Kirkland is the one who
5 collected these various comments and created this document in
6 this format?

7 A. That's my understanding.

8 Q. Okay. I would like to ask you about the action
9 that's listed below section one, which reads, "Action: Staff is
10 revising language to make it seem like less of a power grab- if
11 we can't, we will give it to them. Provide for "written"
12 direction". Did I read that correctly?

13 A. Yes.

14 Q. whose language is that?

15 A. I would assume that's Glenn Kirkland, or someone from
16 the House staff.

17 Q. The check mark that's next to it, who added that?

18 A. That's me.

19 Q. why the check mark next to that?

20 A. It really has no significance. I think I am just
21 checking them off as I am reading through these concerns. I
22 got tired of doing it.

23 Q. with regard to the section four, that concerns the
24 third-party voter registration changes we have discussed
25 before; is that right?

1 A. Yes.

2 Q. It appears that all of the comments, including the
3 action items relate to that database that the supervisors were
4 going to be required to maintain; is that right?

5 A. Right.

6 Q. And, ultimately that was removed?

7 A. Correct.

8 Q. I would like to focus on Section 21 then. It's on
9 the third page. Section 21, does this provision relate to the
10 movers change that we have been talking about?

11 A. It looks like it does, yes.

12 Q. Is it your view that the first portion of the
13 paragraph next to section 21 is a summary of the supervisors of
14 elections opposition to that change?

15 A. It is.

16 Q. And, is it fair to say that the supervisors were very
17 opposed to the change?

18 A. Yes.

19 Q. With regard to the statement that, "it's a violation
20 of NVRA", can you help me understand that?

21 A. I think the supervisors were suggesting that this
22 change was a violation of the National Voter Registration Act.

23 Q. In what way?

24 A. I don't know.

25 Q. With regard to the concerns that are next listed by

1 the supervisors, it references a heavy burden on elections due
2 to the number of provisional ballots substantially increasing,
3 as well as cost increasing, and time to count votes increasing;
4 is that fair?

5 A. Yes.

6 Q. Those were all concerns that were presented by the
7 supervisors of elections with regard to the movers change?

8 A. Yes.

9 Q. With regard to the note that follows that concerning
10 numbers, is it your understanding that that's Glenn Kirkland
11 adding that comment?

12 A. I believe it is.

13 Q. I would like to ask you about the next indented
14 paragraph, which I will read for the record, "RPOF (AP) Section
15 21 needs to stay. Even if there aren't massive cases of fraud,
16 it is a political nightmare where you can play havoc with voter
17 turnout universes if you can change thousands (or even
18 hundreds) of voters from one district to another on election
19 day". Did I read that correctly?

20 A. You did.

21 Q. Is that a statement of Mr. Palmer's concern with
22 regard to the movers change?

23 A. I think it is, yes.

24 Q. Does that accurately describe Mr. Palmer's concern?

25 A. I think it does.

1 Q. Does that describe all of the concerns that
2 Mr. Palmer communicated to you with regard to the movers
3 change?

4 A. Yes.

5 Q. With regard to the statement that, "even if there
6 aren't massive cases of fraud", is it your understanding that
7 this change was not designed to reduce fraud, but had other
8 purposes?

9 A. It's my understanding that there were other purposes,
10 yes.

11 Q. And, from the preface to this language, it suggests
12 that Mr. Palmer didn't think that there were massive cases of
13 fraud, but that the change was still desired for a different
14 reason.

15 MR. THOMAS: Object to the form of the question.

16 BY MR. O'CONNOR:

17 Q. What is your understanding of that statement with
18 regard to the existence of fraud in connection with movers?

19 A. Well, I think he suggested there, even if there
20 aren't massive cases of fraud, he doesn't know if there are or
21 not, but he does suggest there are other intentions for making
22 the change.

23 Q. Do you know whether Mr. Palmer was aware of any
24 instances of fraud beyond those that-- strike that.

25 Do you know whether Mr. Palmer was aware of any

1 instances of fraud in connection with people moving in
2 connection with voting?

3 A. I don't know.

4 Q. You didn't discuss any with him beyond the instances
5 that you know of?

6 A. I am going to invoke the privilege there.

7 Q. With regard to the purpose behind the movers change,
8 is there any purpose that you are aware of that's beyond that
9 that is stated in this paragraph by Mr. Palmer?

10 A. Well, I think he references to playing havoc with
11 voter turnout universes. Is that what you are asking me about?

12 Q. I am asking if you are aware of any purposes beyond
13 those that are stated in this paragraph?

14 A. No.

15 Q. Okay. So, this is a fair statement of what the
16 purpose was, at least as viewed by Mr. Palmer in connection
17 with the movers change?

18 A. It looks to be, yes.

19 Q. With regard to the next paragraph, it appears this is
20 the same language we have seen before from the comments you had
21 provided; is that fair?

22 A. It is.

23 Q. Is there any change you see between this draft and
24 had other versions?

25 A. I may have expanded on my earlier comments. I think

1 I said it didn't seem like there were that many people showing
2 up on election day wanting to change their address, given my
3 conversations with some of the supervisors, and I expressed my
4 disbelief that there were tens of thousands of additional
5 provisional ballots that would need to be processed because of
6 the change.

7 Q. That was based solely on your conversation with
8 supervisors?

9 A. Yeah. And just gut feeling. I thought that was a
10 number they had thrown out there to oppose the bill.

11 Q. I would like to ask you about the action item at the
12 bottom of the page. Who added that text?

13 A. The action?

14 Q. Yes.

15 A. I think it's probably someone from the House staff.

16 Q. Do you think that's Glenn Kirkland?

17 A. It could be.

18 Q. Sounds like you are unsure. Is there anyone else in
19 the House staff it could be?

20 A. I don't know who else it could be, but it's probably
21 Glenn.

22 Q. That action reads, "We really need to hold this
23 provision. Waiting on whether or not computers are present at
24 ALL polling locations. Also waiting on total number of address
25 changes at the poll--FYI, we have them-need to make decision".

1 It seems like there might be a handful of
2 thoughts going on there. Can you help me unpack that
3 paragraph?

4 A. I will try. Waiting on whether or not computers are
5 present at all polling locations, I would imagine there is some
6 thought as to whether a voter's registration can be confirmed
7 at a polling location on election day.

8 Then it looks like Glenn is saying that we need
9 to look at the number of address changes that have occurred in
10 the past, and that was probably at my suggestion.

11 Q. I would like to ask you about that first sentence,
12 "Action: we really need to hold this position"; how do you
13 understand that?

14 A. It looks to me like the House was going to retain
15 that language, at least at this point in the process.

16 Q. Why was it written here that we really need to hold
17 this position? What's your understanding of that?

18 A. I don't know.

19 Q. Moving back up to the paragraph that's preceded by
20 your initials, there is a statement, "this was an issue that
21 Joel really wanted to retain". Joel again is Joel Springer; is
22 that right?

23 A. Uh huh (Indicating in the affirmative).

24 Q. And, is there any reason that Joel wanted to retain
25 this provision beyond that which is stated in the paragraph

1 immediately preceding it by Mr. Palmer?

2 A. Not to my knowledge. I think Mr. Palmer's comments
3 summarize probably what Joel was thinking as well. I don't
4 know what Joel was thinking.

5 Q. I would like to ask you briefly on the second to last
6 page, under the heading General Comments on the PCS.

7 A. Uh huh. Yes.

8 Q. Down at the bottom there is a section that is
9 preceded by your initials and it says, "per your request,
10 attached are", and it lists a number of numbered items. I
11 would like to ask you briefly about the second point, "Some ECO
12 and misc changes to HB1355. The language has been vetted by
13 several election lawyers on both sides of the aisle and is good
14 to go". Did I read that correctly?

15 A. You did.

16 Q. Who are the several election lawyers that you are
17 referring to?

18 A. A number of election lawyers that had an interest in
19 making sure that the Electioneering Communications Organization
20 law was clarified-- that's ECO. Ron Meyer, Mark Harren, John
21 French, Lynn Hearn-- a number of election lawyers that were
22 familiar with the Electioneering Communications Organization.

23 Q. Does that provision have anything to do with the four
24 sets of voting changes?

25 A. Not at all.

1 Q. Then I will move along.

2 I would like to ask you two more things about
3 this document. The paragraph on this page, there is a line
4 that reads, "as there are a number of provisions from the
5 Department of State that we'd like to remove or clarify", can
6 you tell me what you are referring to there?

7 A. Where is that?

8 Q. Second to last paragraph.

9 A. Okay.

10 Q. On the second to last page.

11 A. Uh huh (Indicating in the affirmative). What is your
12 question?

13 Q. My question is, there is a reference to number of
14 provisions from the Department of State we would like to remove
15 or modify.

16 A. Right. If my memory serves me correctly, we were
17 looking at some Department of State reporting provisions that
18 we thought were onerous for Chapter 106 changes, with regard to
19 reporting for political committees, and Electioneering
20 Communication Organizations.

21 Q. Did that have anything to do with the four sets of
22 voting changes?

23 A. No.

24 Q. Last question on this, the last line of that same
25 page we were looking at, reads, "All of the above changes have

1 been submitted to the Senate for possible inclusion in SB2086
2 or some other vehicle". Can you help me understand that line?

3 A. I don't know. Those are comments I believe from
4 Glenn. I would assume the changes that are outlined above are
5 now going to be included in a Senate bill.

6 Q. You believe that's from Mr. Kirkland, not from
7 yourself?

8 A. Right.

9 Q. Okay. And there was reference to Senate Bill 2086.

10 A. This may be from me. I take that back. This may be
11 from me. I don't know.

12 Q. Do you recall 2086 being targeted as a potential
13 companion bill for House Bill 1355?

14 A. Yes.

15 Q. The reference to some other vehicle, what does that
16 mean?

17 A. Some other Senate bill.

18 Q. Okay. I would like to have you take a quick look at
19 a document which will be marked as Mitchell Exhibit 14.

20 (Document shown to witness)

21 while you are taking a look at that, I will note
22 for the record that this document is an email dated April 12,
23 2011, from yourself to Glenn Kirkland, Andy Palmer, Ms. Fenner,
24 Mr. Coates, and Mr. Terraferma. Is that correct?

25 A. Yes.

1 Q. And, do you recognize this email?

2 A. I do.

3 Q. With regard to the first line, it references, "just a
4 few talking points to address supervisors' concerns". Is that
5 in reference to the attachment to this document?

6 A. It is.

7 Q. Is that yet again a statement of the various concerns
8 that were expressed by the supervisors of elections, and the
9 response that you and others from the Republican Party of
10 Florida were providing?

11 A. Yes.

12 Q. Before we get to the attachment, I would like to ask
13 you about the second paragraph of the email, "I am working
14 under the assumption that we will "change the voter address on
15 election day" issue to allow folks to change their address if
16 moving within the county. Voters outside the county must
17 complete a provisional". Did I read that correctly?

18 A. Yes.

19 Q. Can you help me understand that statement?

20 A. I am gathering that someone in the Florida House had
21 decided they wanted to amend the bill to allow people within
22 the county to change their address. I don't know. It didn't
23 come from me.

24 Q. You said someone within the Florida House, and the
25 reason that you say that is because that distinction is not

1 something that you had put forward?

2 A. Right.

3 Q. Is that also not something that came from the
4 Republican Party of Florida?

5 A. I don't believe it did.

6 Q. Or from any of your other clients?

7 A. Right.

8 Q. Do you recall with any specificity who was the
9 proponent of that change with regard to intra versus
10 inter-county movers?

11 A. No.

12 Q. Do you know why that change was made, that
13 distinction between inter-county and intra-county?

14 A. I don't. I don't know the source of it. I would
15 imagine-- this is from my election experience. I would imagine
16 it's easier to verify if someone is registered to vote within
17 the county and to contact the local supervisor, than to attempt
18 to contact some outside supervisor of elections on election
19 day. So, a precinct worker contacting their own supervisor to
20 verify that someone is registered within the county, I think
21 that's an easier process.

22 Q. Why was that distinction not included in the original
23 draft language that you prepared on behalf of your clients?

24 A. I don't know.

25 Q. Is it your understanding that this change was

1 ultimately included in the bill, and so the law, as it is now,
2 under House Bill 1355, is that individuals who move within a
3 county are permitted to vote a regular ballot, whereas movers
4 from a different county must vote a provisional ballot.

5 A. That's my understanding, yes.

6 Q. I would like to ask you about the attachment to this
7 email. Is this document effectively an analogue to what we had
8 previously seen concerning the other supervisors' concerns,
9 except this one is limited to the movers change?

10 A. Yes. That and mailing absentee ballots.

11 Q. So this document focuses on those two issues, and it
12 provide more detail than the others?

13 A. Right.

14 Q. Under the header name/address change on election day,
15 section 21, there is a reference at the end to a concern that
16 change would create unmanageable number of provisional ballots
17 to process. Is that a fair reflection of one of the concerns
18 that was voiced by the supervisors of electric concerning this
19 change?

20 A. That was a concern they raised.

21 Q. I would like to ask you about the paragraph that's
22 numbered as two. Do you know who provided the text of numbers
23 one, two and the following paragraph?

24 A. That's probably me.

25 Q. Okay. why do you say that?

1 A. I look at that and I seem to recall that I tried to
2 make a determination of how many people were actually changing
3 their address on election day.

4 Q. What is the source of that information?

5 A. It may have been information I received from Ron
6 Labasky.

7 Q. Do you have any recollection of that, or is that your
8 best guess as you sit here?

9 A. That's my best guess. I think it was probably from
10 Duval County.

11 Q. So, the 13,000 reference, is it your understanding
12 that was Duval County's number of address and name changes on
13 election day in 2010?

14 A. I believe. I am not certain.

15 Q. Help me understand a bit of a disconnect. You had
16 testified earlier that the supervisors' concern that there
17 would be tens of thousands of additional provisional ballots,
18 you said you didn't think that was right, there wouldn't be
19 that number. How do you square with the statement here that in
20 Duval County they had over 13,000 name and address changes on
21 election day in 2010 in that one county?

22 A. I seem to recall this one stood out to me because it
23 didn't make sense, and I don't recall the explanation from the
24 Duval County supervisor, but there was aberration here, and I
25 don't recall what it was.

1 Q. 13,000, if that number was correct, does it seem
2 reasonable if the change went into effect that there would be
3 tens of thousands, given there was 13,000 in just one county?

4 MR. THOMAS: Object to the form of the question.

5 A. This language also says that 13,000 changed their
6 address or name on election day, so I don't know how many would
7 have changed their address on election day in 2010, state-wide.

8 BY MR. O'CONNOR:

9 Q. Help me understand the sentence at the beginning of
10 paragraph two, "there is also the political justification".
11 What does that mean?

12 A. I think that goes back to Andy Palmer's comments, and
13 the concern that a political party would have regarding
14 messaging and sending political mail to voters in one county
15 for months and months, only to have those voters change their
16 address at another county, and not be eligible to vote in that
17 county any longer, in the prior county. I think I make
18 reference to that here at the end.

19 Q. So, that's one of the--

20 A. That's the political justification, that it's
21 difficult to reach out to perspective voters in one county, and
22 then have them change their address and move to another county
23 on election day, and no longer be able to vote for the
24 candidates that you have been messaging about for the last
25 three months.

1 Q. I can appreciate that concern. Why did that lead to
2 the proposal to prevent people who move between counties, and
3 want to change their address at election day, to require them
4 to vote a provisional ballot as opposed to a regular ballot?

5 A. I think that may have been a compromise that was put
6 in the bill some time during the process.

7 Q. Let's go back to the original language that you had
8 prepared on behalf of your clients, the Republican Party of
9 Florida, and Mr. Rimes. If the political justification or
10 motivation is this concern about messaging people who move to a
11 particular location, who then move, why would you want to
12 require those people to vote a provisional ballot when they
13 move to a different location?

14 A. I think you want to permit them to be able to vote
15 with a provisional ballot. I think it represents a compromise
16 in the legislative process, as the bill is moving through
17 committees.

18 Q. Under the old law they would have been able to vote
19 in the new county, and they would have been able to vote a
20 regular ballot.

21 A. Right.

22 Q. Why require them to vote via provisional ballot?

23 A. I can't answer that.

24 Q. What is your understanding of the process for casting
25 a provisional ballot?

1 A. I think if someone shows up on election day, and
2 their eligibility to vote in that particular precinct is
3 questioned, they are given a provisional ballot and given an
4 opportunity to vote that provisional ballot, and provide
5 evidence to support the validity of that provisional ballot
6 within two days after the election. It's a catch all.

7 Q. What is your understanding with regard to the rates
8 at which provisional ballots are counted as opposed to regular
9 ballots?

10 A. I don't know.

11 Q. I would like to have you take a look at a document we
12 will mark as Mitchell Exhibit 15. (Document shown to witness)

13 Mr. Mitchell, while you are taking a look at
14 that, I will note for the record that this is an email dated
15 April 20, 2011, from you to Mr. Kirkland with a copy to Ms.
16 Fenner and Mr. Palmer. Do you recognize this email?

17 A. I do.

18 Q. Does this refresh your recollection with regard to
19 the rate at which provisional ballots are counted?

20 A. Yes. I mean, I think these are numbers that were
21 provided to me by the supervisors of elections.

22 Q. Do you believe these numbers to be correct?

23 A. I suppose.

24 Q. Do you have any reason to question them?

25 A. No.

1 Q. We will get to the substance in a minute, but you are
2 providing data to Mr. Kirkland with regard to the rates at
3 which provisional ballots are counted; is that right?

4 A. Uh huh (Indicating in the affirmative).

5 Q. Would you have provided that data to him if you had
6 doubts about its accuracy?

7 A. No.

8 Q. Just focusing on the email at the bottom, do you read
9 this email as Mr. Kirkland requesting from either you,
10 Mr. Palmer, or Mr. Terraferma, the number of provisional
11 ballots cast in the last election cycle, as well as the number
12 of how many were in fact counted?

13 A. Yes.

14 Q. Is your response in the top email that you don't have
15 numbers for the 2010 election cycle, but that for the 2008
16 general election 35,635 provisional ballots were cast, but only
17 17,312 provisional ballots were counted, meaning that
18 48.58 percent of the provisional ballots cast were counted; is
19 that accurate?

20 A. It is.

21 Q. Does that refresh your recollection with regard to
22 the rates that provisional ballots are counted as compared to
23 regular ballots?

24 A. It does in this 2008 election, yes.

25 Q. Did the fact that in the 2008 general election

1 provisional ballots were counted at just under 50 percent rate
2 play any role in connection with the change to the movers
3 provision that we have been talking about?

4 A. Not to my knowledge, no.

5 Q. With regard to the change to individuals who move and
6 update their address at a polling place, we talked about the
7 political justification for that move. Given that provisional
8 ballots, at least in the last general election, were counted at
9 a little less than 50 percent, does it concern you that
10 requiring additional people to cast provisional ballots may
11 lead to some of those people having their vote not counted?

12 A. I think it is possible, yes.

13 Q. Based on the experience from the 2008 election, do
14 you think that there is at least a decent chance that some
15 significant proportion, perhaps up to 50 percent, might not
16 have their ballot counted?

17 A. They may not.

18 MR. O'CONNOR: why don't we go off the record.

19 whereupon, a lunch break was taken at 1:06.

20 Testimony resumed at 2:07.

21 BY MR. O'CONNOR:

22 Q. Back on the record. Mr. Mitchell, did anything occur
23 to you over break that needed to be added to supplement or
24 correct any of your prior testimony?

25 A. It did not.

1 Q. Before the break, we were talking about the movers
2 change. I'd like to stick with that for a little bit. I have
3 a few more questions on that, and then we can move off that to
4 the next subject.

5 I would like to have you take another look at a
6 different document than the one we have looked at before, but
7 it has very similar content and I would like to compare the two
8 and confirm that they are the likely same.

9 I'd like show you a document that has previously
10 been marked as Department of State Exhibit 68. (Document shown
11 to witness)

12 I just handed you a document that was previously
13 marked Department of State Exhibit 68. It's an email dated
14 April 9, from Glenn Kirkland to, what appears to be his
15 personal email, Judy McDonald, and a cc to Alex Kelly, Jason
16 Peradda (phonetic), Sam Vergeez (phonetic), and Kirk Pepper.
17 Have you seen this email before?

18 A. I don't think I have.

19 Q. Okay. With regard to the individuals listed here,
20 Judy McDonald; can you tell me who she is?

21 A. Judy is a House of Representatives employee.

22 Q. She is a staffer with the House?

23 A. She is.

24 Q. Alex Kelly, I think you mentioned him before. Is he
25 with the House Redistricting Committee?

1 A. He is.

2 Q. Jason Peradda?

3 A. I believe Jason is also with redistricting too.

4 Q. How about Sam Vergeez?

5 A. Sam, I think when this email takes place I think he
6 was in the House majority office, House employee.

7 Q. Kirk Pepper, remind me of his title.

8 A. I believe he was Deputy Chief of Staff in the House
9 speaker's office.

10 Q. Okay. According to the cover email, attached is the
11 summary of comment on the PCS as well as the SOE provision. I
12 would like to ask you about the attachment to this document.

13 This appears to me, and I would like to get your
14 sense of it, as a copy of the document we had previously looked
15 at earlier in your deposition, collecting the various comments
16 concerning the PCS, as well as House Bill 1355, and the
17 supervisors' concerns. Does that appear to be correct?

18 A. It does look like-- it looks like it might be in a
19 slightly different version, but it does look like the same
20 sections and comments that we looked at earlier today.

21 Q. I'd like to go to the page that has at the top
22 section 21, at the bottom the Bates label is State Affairs
23 Staff email 00317. This is the section relating to the movers
24 change; is that right?

25 A. Yes.

1 Q. We have talked about this previously, so we won't
2 need to spend a lot of time here. Just one question with
3 regard to the comment from RPOF and Andy Palmer. I think you
4 testified previously that this sets out the reason why he
5 wanted this change incorporated into the draft legislation; is
6 that right?

7 A. Yes. I think so.

8 Q. My question is this, with regard to that change, you
9 said this is the reason why he desired the change, why would
10 the draft legislation that you prepared require people who move
11 between counties to vote provisional ballot?

12 A. I don't know why, or what the impetus was for that to
13 be included to allow voters to vote a provisional. Are you
14 asking why there was that change that was made at some point in
15 the process?

16 Q. We don't need to focus on the distinction. I am
17 asking about why movers would be required to vote a provisional
18 ballot?

19 A. I think I explained earlier, I think it was more
20 difficult to confirm whether voters that moved from one county
21 to another are actually registered to vote in the State of
22 Florida.

23 Q. But, if it's possible to confirm it, because the
24 system that you had discussed with Supervisor Clark, for
25 example, if that is possible to confirm that person's

1 registration, why shouldn't that person be able to vote via
2 regular ballot?

3 A. I don't know.

4 Q. Given that it's unclear to you the reason why you
5 would require that type of mover to vote via provisional
6 ballot, does it concern you at all that you would be requiring
7 more people to vote via provisional ballot, given the facts we
8 discussed before the break, that in the 2008 general election
9 fewer than 50 percent of provisional ballots cast were counted?

10 MR. THOMAS: Object to the form of the question.

11 A. I think the way the bill was originally drafted you
12 weren't allowed to vote a provisional ballot at all. And, what
13 I testified to earlier was that was a compromise to at least
14 make certain that the people that were voting, or moving from
15 outside of the county would at least get a provisional ballot.
16 I think the provisional ballot aspect represented a compromise
17 with the supervisors of elections to make sure that those
18 individuals moving from outside the county did get an
19 opportunity to vote in some form. That's all I know about the
20 provisional ballot component.

21 BY MR. O'CONNOR:

22 Q. Was there ever any discussion of permitting a mover
23 to vote a regular ballot if the supervisor had been able to
24 confirm that they were a registered voter, and hadn't
25 previously voted?

1 A. No. I mean, I think that was the state of the old
2 law, it was just a matter of whether the supervisors were
3 actually confirming that person was a registered voter.

4 Q. So, under the draft provision that you had prepared,
5 is it your understanding that someone who moved and didn't
6 update their address until they arrived at the polling place
7 wouldn't be allowed to vote at all that day?

8 MR. THOMAS: Objection. Asked and answered.

9 A. Yeah. I think that was the initial way the bill was
10 drafted.

11 BY MR. O'CONNOR:

12 Q. The compromise position was to allow that type of
13 person to vote a provisional ballot at the polling place?

14 A. I believe so.

15 MR. THOMAS: Same objection.

16 BY MR. O'CONNOR:

17 Q. I would like to now have you take a look at a
18 document that's been previously marked as Supervise of
19 Elections Exhibit 29, which for the record is an April 12, 2011
20 email from the Charlotte County Supervisor of Elections, to a
21 variety of people. Take a look at that and tell me if you have
22 seen it before. (Document shown to witness)

23 A. I don't think I have seen this.

24 Q. Okay. I would like to focus on the email below,
25 which according to the email above is an email that the

1 Charlotte County supervisor sent to certain members of the
2 Florida House of Representatives concerning House Bill 1355,
3 and the proposed amendment concerning voters who move and try
4 to update their address at a polling place.

5 In the first line of the second paragraph, the
6 Charlotte County Supervisor writes, "there is presently no
7 problem with updating names and addresses of voters at the
8 polling location, either electronically through our EVID
9 machines, or by a simple phone call to the main office within
10 checks state-wide database". Did I read that correctly?

11 A. Yes.

12 Q. Do you have any reason to disagree with this
13 supervisor that there is no problem with the old system of
14 confirming someone's registration at the polling place?

15 A. No. Not with regard to Charlotte County, no.

16 Q. Do you have any reason to disagree with the statement
17 with regard to any other county in the State of Florida?

18 A. No. But, I think that's what he is speaking to, is
19 Charlotte County.

20 Q. I appreciate that clarification. So that I am clear,
21 do you have any information about any other county that differs
22 from this, with regard to Charlotte County?

23 A. I don't.

24 Q. The next paragraph lists why the change that was
25 proposed was problematic, and first it would create additional

1 work for the canvassing board, and then it goes on to list
2 additional details concerning that burden. were you aware of
3 the concern that the change being proposed with regard to
4 movers would create additional burdens on supervisors of
5 elections?

6 A. No.

7 Q. That's not something you had heard of before?

8 A. No.

9 Q. I would like to ask you about the second to last
10 paragraph, which reads, "It is to be expected that there will
11 be significant voter dissatisfaction with the new requirement
12 having to vote a provisional ballot, which voters are naturally
13 disinclined to do as opposed to voting a regular ballot". Did
14 I read that correctly?

15 A. You did.

16 Q. Do you agree with that statement?

17 A. I suppose so.

18 Q. why is that?

19 A. I think any time you change the election procedures,
20 and people aren't accustomed to it, they are going to get upset.

21 Q. Is there anything beyond that?

22 A. They may not like the provisional ballot. I don't
23 know.

24 Q. why do you think a voter might not like a provisional
25 ballot?

1 A. I think voters may think it's something different,
2 that it's not voting on election day. I don't know.

3 Q. Given this statement by this supervisor, as well as
4 your own opinion with regard to provisional ballots, what is
5 your view with regard to the consequence of the change
6 occasioned by House Bill 1355, concerning movers, and the
7 requirement that additional Florida voters vote via provisional
8 ballot?

9 MR. THOMAS: Object to the form of the question.

10 Asked and answered.

11 A. See if I understand your question. Can you rephrase
12 your question for me?

13 BY MR. O'CONNOR:

14 Q. You know what, we will move on. I would like to ask
15 you about a document that's previously been marked as
16 Supervisor of Elections Exhibit 11. (Document shown to witness)

17 For the record, this is an email dated April 13,
18 from Jennifer Edwards, the Supervisor of Elections of Collier
19 County. Have you seen this email before?

20 A. I have not.

21 Q. I would like to ask you about the second paragraph
22 which references section 21, and based on the subject
23 references House Bill 1355. In the middle of the paragraph,
24 Ms. Edwards, the Collier County Supervisor writes, "This
25 proposal of requiring all these voters to vote a provisional

1 ballot will be confusing and frustrating to an innocent voter
2 who just happened to move and did not let us know ahead of
3 time. This change will also increase the lines at the polling
4 places. In the 2008 general election, 1,710 affirmations were
5 completed on election day in Collier County, and 894 in the
6 2010 general election. For the last 40 years in Florida voters
7 who have changed their address have been able to complete an
8 affirmation and vote a regular ballot on election day. We have
9 not experienced any problems in Collier County". Did I read
10 that correctly?

11 A. You did.

12 Q. Have you heard this concern during the time that
13 House Bill 1355 was under consideration?

14 A. Just in the context of the supervisors' formal
15 concerns that were on that piece of paper we looked at earlier.

16 Q. Are these consistent with the concerns you had heard
17 from other supervisors with regard to the problem of forcing
18 more people to vote via provisional ballot?

19 A. Yes.

20 Q. Did these concerns give you cause for concern?

21 A. It really wasn't my job to be that concerned about
22 the supervisors of elections. I think these concerns are
23 probably directed at the legislature.

24 Q. Help me understand that. What do you mean directed
25 to the legislature?

1 A. I think the supervisors' concerns were, you know.
2 Circulated and forwarded to House staff, and House legislators,
3 and in turn the Senate, in their effort to lobby against
4 provisions of the bill, but they weren't lobbying me.

5 Q. Fair enough. Although I guess your draft was
6 proposing one change, and then there was-- that was amended to
7 some extent, and then there was a subsequent proposal and they
8 were expressing concern with regard to that amended proposal?

9 A. Right.

10 Q. The email we just looked at was from April 13, 2011.
11 I would like to continue forward in the timeline, and have you
12 take a look at a document that's been previously marked as
13 Supervisor Exhibit 71. (Document shown to witness)

14 while you are taking a look at that, I will note
15 for the record this is an email from Jonathan Fox dated
16 April 13, 2011, to Dawn Roberts, with a cc to Dan Carlton.
17 Have you ever seen this email before?

18 A. I think I have.

19 Q. I would like to ask you first about the email that
20 starts at the bottom of the first page and continues on the
21 second page. It's an email dated March 31, 2011, from you to
22 Dawn Roberts. Is that correct?

23 A. Uh huh (Indicating in the affirmative).

24 Q. I am sorry. Yes?

25 A. Yes. I am sorry.

1 Q. In the content of the email, the body of the email,
2 you write, "pursuant to your request attached is proposed
3 language for SB 2086".

4 A. Uh huh (Indicating in the affirmative). Yes.

5 Q. What request did you receive from Ms. Roberts?

6 A. I think it was actually an ethics bill change
7 regarding blind trust provisions.

8 Q. Is that a provision that was included in SB2086?

9 A. It was not. I don't think it was. I don't recall.
10 It was either an ethics provision that they were contemplating,
11 or Chapter 106 provision. I don't recall.

12 Q. So, is it your belief that the language that was
13 requested of you, and you were providing to Ms. Roberts, did
14 not relate to any of the four sets of voting changes?

15 A. That's correct.

16 Q. I would like to move forward in the email chain. It
17 continues from the email of March 31 to April 13, and then
18 there are three emails on April 13. I would like to ask you
19 about the second email in the chain, from Jonathan Fox to Dawn
20 Roberts, on April 13, 2011, at 5:37 pm. In that email, I would
21 like to ask you about the last sentence of the first paragraph,
22 which states, "but it may be prudent to start thinking about
23 having Pat line up a budget sponsor and coordinating Coates and
24 co to prep the eventual sponsor". Did I read that correctly?

25 A. Yes.

1 Q. Can you help me understand what Mr. Fox is stating
2 there?

3 A. I would imagine-- I don't know what the amendment
4 they were referring to for proposed budget meeting, but I would
5 imagine that if there is some amendment that they are asking
6 really me to come up with some talking points for the
7 amendment.

8 Q. You said they were asking you to come up with it, is
9 that the reference to Coates and Co?

10 A. That would be my assumption, yes.

11 Q. When they reference Coates and Co, do you believe
12 that's a reference to you alone, or does that include anyone
13 else who works at your law firm?

14 A. I think it's a reference to me alone.

15 Q. Why do you think that?

16 A. Because I am the only one really doing the work at
17 this point on drafting. I was the one that drafted the
18 original bill.

19 Q. So--

20 A. I guess it could be inferred that Noreen was going to
21 help me. I don't know if Richard Coates is involved in this
22 or, not. But, I don't know what the amendment is.

23 Q. I would like to ask you about the top email,
24 April 13, later in the afternoon/evening, which reads, "Nix
25 that. Dan informs me that there may be a plan coalescing

1 around a strike-all for 2086 ed-rules that incorporated some of
2 Richard's major changes. We are just trying to keep up at this
3 point. LOL". Did I read that correctly?

4 A. Yes.

5 Q. What is Mr. Fox referencing when he says that this
6 strike-all will incorporate some of Richard's major changes?

7 A. I don't know.

8 Q. Who do you believe he is referring to when he says
9 Richard?

10 A. I don't know. It could be Richard Coates. I don't
11 know. I know that Dan Carlton work on ethics issues from time
12 to time.

13 Q. Are you aware of any other individuals named Richard
14 who were involved in the election bill in 2011?

15 A. No.

16 Q. Do you know why Mr. Coates, or Richard, if that
17 refers to Mr. Coates, why he would be referenced here, if you
18 were the only one from the Coates Law Firm who was working on
19 the elections bill?

20 MR. THOMAS: Objection to the form of the question.
21 Just asking for sheer speculation out of this witness.

22 A. I don't know.

23 BY MR. O'CONNOR:

24 Q. Do you know whether Mr. Coates had any communications
25 with any members of the Florida legislature, or their staff,

1 with regard to either House Bill 1355, or Senate Bill 2086?

2 A. I don't know.

3 Q. I would like to have you take a look at document we
4 will mark as Mitchell Exhibit 16. (Document shown to witness)

5 Do you recognize this document?

6 A. I do. It's notes I was taking while I was watching
7 this committee meeting.

8 Q. So these are notes that you took while watching the
9 April 14, 2011, committee meeting concerning House Bill 1355?

10 A. That's correct.

11 Q. Were you at the committee hearing?

12 A. I was not.

13 Q. You were watching it on television?

14 A. Correct. Either television or on my computer.

15 Q. I would like to ask you about the back page. There
16 is a header, which I believe reads, main issues; is that
17 correct?

18 A. Uh huh (Indicating in the affirmative).

19 Q. Can you read for the record the two entries that you
20 have included underneath that heading?

21 A. Sure. "Main issues: 48 hour turnaround on VR
22 registration, applications the main problem. Changing one's
23 address on election day".

24 Q. Is it correct that these are the two main issues that
25 you felt came up during the April 14, 2011 House committee

1 hearing?

2 A. These were concerns that were raised by members on
3 that committee, yes.

4 Q. What do you recall about the concerns regarding the
5 48 hour turnaround?

6 A. Specifically that perhaps it was too short a period.

7 Q. What were your thoughts with regard to the concerns
8 that were raised by legislators concerning whether 48 hours was
9 a sufficiently long period of time?

10 A. I don't mean this to be flippant, but I was just
11 identifying the issue. I didn't care. It wasn't an issue I
12 was concerned with.

13 Q. 48 hours was not something you had any interest in?

14 A. I personally thought it might have been too short a
15 period, but I didn't really care. I wanted to identify those
16 issues, because I knew they would come up again at floor
17 debate, or at the next committee stop.

18 Q. Did you ever discuss with anyone your personal
19 opinion that 48 hours may be too short a period of time?

20 A. I don't think I did. Glenn Kirkland may have asked
21 me for some talking points or rationale for the 48 hour
22 turnaround. But, I never offered him a compromise, or-- so I
23 may have had conversations with him, and just said that those
24 concerns were expressed at that committee meeting. Again, I
25 didn't have any solution or resolution.

1 Q. If 48 hours wasn't something you were interested in,
2 or hadn't put forward, why would Glenn Kirkland ask you for
3 talking points with regard to that issue?

4 A. I think he was asking for talking points on what
5 those provisions would do. Not for my personal opinion.

6 Q. Okay. So you never discussed with anyone your
7 personal opinion that 48 hours may be too short a period of
8 time for turning around voter registration applications?

9 A. Not that I recall, no.

10 Q. How about in regard to changes in address on election
11 day?

12 A. I don't recall having any specific conversations with
13 Glenn, or anyone else about, you know, changing those
14 provisions, or allowing provisional ballots. There may have
15 been some conversation about, in the context of the
16 supervisors' concerns providing the provisional ballot as an
17 option, but I believe that came from House staff, or
18 legislators.

19 Q. I think you testified about this in the morning, but
20 the movers change was not really an area you had focused on, so
21 is it fair to say you didn't have much of an opinion about
22 the--

23 A. To use a local term, I didn't have a dog in the hunt.
24 I didn't have a preference one way or the other.

25 Q. It was something you had been asked to do by a

1 client, and you were complying with that request?

2 A. Right.

3 Q. I would like to ask you briefly about a document
4 previously marked Department of State Exhibit 72. (Document
5 shown to witness)

6 For the record this is an April 14 email from
7 Jonathan Fox to Dawn Roberts, with a cc to John Shay. Have you
8 seen this email before?

9 A. Don't think so, no.

10 Q. This email appears to discuss Senate Bill 2086, and
11 I'd like to ask you briefly about one of the sentences in the
12 first email.

13 The sentence reads, "You might also wish to
14 consider suggesting that Eric tap his "other sources" who
15 drafted some of the more controversial language to review the
16 draft, if he hasn't already. He will likely get a more
17 thorough analysis with better spin right now". Did I read that
18 correctly?

19 A. Yes.

20 Q. Do you know who Mr. Fox is referencing when he says
21 Eric?

22 A. I think he is talking about Eric Edwards.

23 Q. And, Eric Edwards is in Senate leadership?

24 A. Majority office, I believe.

25 Q. And do you know who Mr. Fox is referencing when he

1 talks about the other sources who drafted some of the more
2 controversial language?

3 A. I can't speculate. It may be House staff. May be
4 me. I don't know.

5 Q. Do you know why he thinks that Eric may get a more
6 thorough analysis if he asks those other sources?

7 A. I don't know.

8 Q. Lastly, with the final phrase of the paragraph
9 Mr. Fox says, "We are on the outside looking in on most of the
10 provisions in the strike-all that are likely to attract
11 attention". Do you know what Mr. Fox means by that?

12 A. I would imagine he is referring to any of the
13 controversial changes-- you know, the Senate staff watches
14 these committee meetings on television to know what to expect,
15 if the bill comes over to the Senate. I guess he is referring
16 to any of the controversial provisions of the House Bill.

17 Q. By saying we are on the outside looking in, is it
18 your understanding he is talking about he is in the Senate
19 versus what is happening in the House?

20 A. I think so.

21 Q. Is there any reason to believe he is referring to the
22 fact that the provisions are being drafted outside the
23 legislative staff?

24 A. I mean, I don't think so. I think at this point it's
25 getting late in the process, I think he is probably referring

1 to the bill coming over from the House shortly, and the Senate
2 having to deal with some of the same questions from its members
3 that the House did.

4 Q. I would like to have you take a very quick look at a
5 document previously marked as Supervisor of Elections Exhibit
6 No. 1, which for the record is a document released on FSASE
7 letterhead, dated April 29, 2011, and it references Senate Bill
8 2086 at the top. I would like to have you look at the second
9 page, and the section that begins with section 26. (Document
10 shown to witness)

11 That paragraph references the fact that this
12 provision of Senate Bill 2086 will remove the ability of a
13 voter to change their address at the polling place if they have
14 moved from one county to another. Is it your understanding
15 that this is the analogue provision to the movers change from
16 House Bill 1355 that we have been discussing?

17 A. I would assume it is.

18 Q. Are the supervisors expressing the same concern that
19 that change will result in thousands of additional provisional
20 ballots, and that there are not reports of widespread abuse or
21 double voting?

22 A. Yes. That's what they are saying.

23 Q. Had you seen this document before?

24 A. I have not.

25 Q. While we are talking about the Senate bill, do you

1 know who sponsored Senate Bill 2086?

2 A. Senator Miguel Diaz de la Portilla.

3 Q. Do you know why Senator Diaz de la Portilla was the
4 sponsor?

5 A. I don't.

6 Q. Does it surprise you that he was the sponsor of the
7 bill?

8 A. I believe at the time he was the Chairman of the
9 Ethics and Elections Committee of the Senate.

10 Q. Do you know whether he was a freshman at that time?

11 A. I don't think he was. I think he may have been in
12 his second year.

13 Q. Is there anything that surprises you about the fact
14 that he was sponsoring the bill?

15 A. No.

16 MS. MEZA: Can we go off the record for a moment?

17 whereupon, a recess was taken at 2:42.

18 Testimony resumed at 2:44.

19 BY MR. O'CONNOR:

20 Q. Back on the record. Mr. Mitchell, I would like to
21 now talk about the early voting change, and I think perhaps to
22 speed things along maybe we can just talk in general terms.
23 It's my understanding that the early voting change is not
24 something that was ever included in any of the draft language
25 you had prepared in connection with the 2011 legislative

1 session; is that right?

2 A. That's correct.

3 Q. Do you know where the idea came from for the changes
4 to early voting that were occasioned by House Bill 1355?

5 A. I don't. I assume it was someone, or a legislator in
6 the Senate.

7 Q. Is it your understanding that change is something
8 that came from the Senate side as opposed to the House?

9 A. I think.

10 Q. What discussions did you have with anyone
11 legislators, legislative staff, or other third parties, with
12 regard to the change to early voting?

13 A. I don't recall having any discussions with anybody
14 about early voting.

15 Q. Did you have any opinion with regard to the
16 advisability of the change to early voting?

17 A. I didn't.

18 Q. Is that an issue that you had focused on previously,
19 or is that like the movers change, something that you weren't
20 all that involved with?

21 A. We had focused on it years before, but it wasn't
22 something I had any interest in this year, 2011.

23 Q. I would like to have you take a look at what we
24 previously marked as Mitchell Exhibit 6. This was an email
25 dated February 9, 2011 from you. We talked about this one

1 previously?

2 A. Uh huh (Indicating in the affirmative).

3 Q. There is a statement in here about an item to noodle
4 on concerning early voting, and I just don't recall your answer
5 before. What prompted your inclusion of this statement in this
6 email?

7 A. I think every year, and I am generalizing, every year
8 when an election bill is proposed there is talk of changing
9 early voting, and I simply threw that out there for discussion
10 to those people that were recipients of this email.

11 Q. Based on the fact that there were no provisions
12 regarding early vote in any of the drafts you worked on, is it
13 fair to conclude none of the recipients of this email picked up
14 on early voting, or wanted to move forward with that as a
15 proposed change?

16 A. That's my assumption, yes.

17 Q. I would like to show you a document we will mark as
18 Mitchell Exhibit 17. (Document shown to witness)

19 Mr. Mitchell, this appears to be a page of
20 handwritten notes. Have you seen this document before?

21 A. Yes. These are my notes briefly memorializing a
22 meeting that took place with House and Senate staff, Glenn
23 Kirkland and Eric Edwards.

24 Q. When did this meeting occur?

25 A. Looks like it occurred on April 18, 2011.

1 Q. Do you recall the purpose of this meeting?

2 A. I believe it was simply to make sure that the House
3 and Senate staff were kind of on the same page, if you will,
4 with regard to passing the bill, and that the provisions that
5 every one wanted in the bill, from the Senate and House
6 perspectives, were included. Trying to match up the bills and
7 make sure they have the same contents.

8 Q. When you say the bills, you are referring to House
9 Bill 1355 and Senate Bill 2086?

10 A. That's correct.

11 Q. It appears from your notes this meeting lasted from
12 10 am to 2 pm.

13 A. Uh huh (Indicating in the affirmative).

14 Q. That seems like quite a long meeting?

15 A. Yeah, four hours.

16 Q. Is it your view that the group sat together and
17 compared both bills and went through them section by section?

18 A. We did.

19 Q. There is reference to DLP wants to retain EV changes
20 (not in HB); did I read that correctly?

21 A. You did.

22 Q. Could you explain what your note means?

23 A. I believe that's a reference to Senator Diaz de la
24 Portilla wanting to retain early voting changes.

25 Q. So, is that a topic that was discussed during the

1 meeting then?

2 A. Not really any further than that. That would have
3 been conveyed by Eric Edwards in the Senate.

4 Q. That's your conclusion because Eric Edwards is a
5 Senate staffer?

6 A. (Indicated an affirmative response).

7 Q. Do you recall any discussion beyond the simple fact
8 that Senator Diaz de la Portilla wanted to maintain the early
9 voting change?

10 A. No, I don't recall any other discussions.

11 Q. The next line down reads, "MH wants to keep ballot
12 rewrite language". Who is MH?

13 A. Probably Senate President Mike Haridopolos.

14 Q. Does that have anything to do with the four sets of
15 voting changes?

16 A. I don't recall. I don't think it does. There was a
17 separate bill that was moving around that may have been part of
18 Senate Bill 2086. I don't recall.

19 Q. It sounds like it didn't have anything to do with the
20 four sets of voting changes that we are talking about here.

21 A. I don't believe it did.

22 Q. The next line, "plan is to amend SB in Senate budget
23 committee to line it up with the House". Did I read that
24 right?

25 A. You did.

1 Q. Help me understand that statement. Is that a
2 communication that you received at this meeting with regard to
3 the procedure that was anticipated?

4 A. That's correct.

5 Q. Is there any additional detail with regard to how
6 that was going to be done?

7 A. No. That was up to Senate staff.

8 Q. Okay. Then the last line, which I believe reads,
9 "me, NF and two above went through two bills, page by page to
10 get them" --

11 A. Identical.

12 Q. Is that a description of what you were doing at the
13 meeting?

14 A. It is.

15 Q. Me and NF, is that Noreen Fenner?

16 A. Noreen Fenner.

17 Q. And then two above, is that Mr. Edwards and
18 Mr. Kirkland?

19 A. It is.

20 Q. Other than just hearing Senator Diaz de la Portilla
21 wanted to retain the early voting change, was there any
22 discussion of the early voting issue?

23 A. No.

24 Q. I would like to show you what we will mark as
25 Mitchell Exhibit 18. (Document shown to witness)

1 while you are taking a look at that, I will note
2 for the record that this is an email dated April 25, 2011, from
3 you to what appears to be Eric Edwards, then a cc to Glenn
4 Kirkland, Andy Palmer, Frank Terraferma, and Noreen Fenner; is
5 that right?

6 A. That's correct.

7 Q. Can you tell me what this email is referring to?

8 A. I believe I am simply looking at the strike-all
9 amendment that was prepared by the Senate and providing my
10 comments.

11 Q. Is this the strike-all that would have been offered
12 in connection with the Senate budget committee hearing that was
13 referenced in the previous exhibit?

14 A. I believe it is.

15 Q. I'd just like to ask you about the first line there,
16 "Section 37-early voting is not in HB and is a Senate issue.
17 Don't have a preference here". Does that reiterate what you
18 had discussed before that early voting was an issue coming from
19 the Senate, and that neither you, nor your clients, nor
20 apparently the House, had any views on the early vote change?

21 A. That's correct.

22 Q. Do you know what the original early voting change, as
23 it was initially proposed by Senator Diaz de la Portilla, would
24 have entailed with regard to the actual early voting time
25 frames?

1 A. I don't.

2 Q. Is that something that you followed at all?

3 A. Not that closely, no.

4 Q. So then is it fair to say you didn't have any
5 involvement with the negotiations concerning the early voting
6 change, and whether it would be enacted as initially proposed
7 or subsequently amended?

8 A. That's correct.

9 Q. I would like to have you take another look at the
10 document previously marked Supervisor of Elections Exhibit No.
11 1. We previously looked at this document in connection with
12 the movers change, and now I would like to ask you to take a
13 look in connection with the early voting change.

14 Again, this is a document from the FSASE, dated
15 April 29, 2011. In the first paragraph they refer to early
16 voting having been a tremendous success in Florida. Do you
17 agree with that statement?

18 A. Sure.

19 Q. What's the basis for that? Why do you think so?

20 A. I think it's an added convenience for the voters.
21 It's very popular. That's what they are referring to.

22 Q. Immediately below that there is a statement that,
23 "the Florida State Association of Supervisors of Elections
24 believes that maintaining the 15 day time frame best serves the
25 voting public". Did I read that correctly?

1 A. You did.

2 Q. Do you have any reason to disagree with that
3 statement?

4 A. Not as an opinion of the collective body of that
5 association, no.

6 Q. How about you personally? Do you have any reason to
7 disagree with that statement?

8 A. No.

9 Q. In the next paragraph the Association expresses some
10 concerns with regard to over-time and additional costs that the
11 changes to early voting will occasion. Do you see that?

12 A. I do.

13 Q. And, do you have any information with regard to the
14 supervisors' concern that the change to early voting that had
15 been proposed in connection with 2086 would increase costs?

16 A. No, I don't. I don't agree with it.

17 Q. I am sorry. You disagree with the supervisor
18 statements here?

19 A. Yeah. I don't know if they are based on hard
20 evidence, but that's certainly what they said.

21 Q. I would like to have you take a look at the second
22 page, and focus on section 37. Section 37 states that, "not
23 having the 15 day time frame for the general election could
24 result in crowding and confusion at early voting sites and on
25 election day at the precincts. Maintaining 15 days for the

1 general election is imperative to a smooth general election in
2 the state". Do you have any reason to disagree with that
3 statement by the supervisors?

4 A. Not as a statement from them, no.

5 Q. Do you have any information with regard to the
6 relative usage by Florida voters with regard to the first week
7 of early voting, as compared to the second week of early
8 voting?

9 A. I am sorry. Do I have any opinion or evidence?

10 Q. Any information?

11 A. No. It's my understanding that early voting during
12 any period is very strong at the beginning of the period, and
13 wanes in the middle, and then picks back up before the
14 election. But, that's-- I don't have any hard numbers.

15 Q. Okay. Have you ever heard of anyone refer to the
16 first week of early voting as a waste of money?

17 A. No, not specifically. No. I have heard there are a
18 lot of supervisors find it to be expensive in the smaller
19 counties.

20 Q. Had you ever heard of anyone refer to the first week
21 of early voting as a throw away?

22 A. No.

23 Q. What's your opinion with regard to the statement that
24 the first week of early voting is either a waste of money or
25 throw away?

1 MR. THOMAS: Object to the form.

2 A. I don't have an opinion about it.

3 BY MR. O'CONNOR:

4 Q. Are you aware of the racial make-up of voters who
5 utilize early voting?

6 A. I am not.

7 Q. Do you have a sense as to the affect that will be
8 caused by the elimination of the first week of early voting?

9 A. No.

10 Q. Do you agree with the supervisors that eliminating
11 the first week of early voting may result in crowding at
12 polling places?

13 A. During early voting?

14 Q. Yes.

15 A. Early voting sites? I imagine it's possibility, yes.

16 Q. Are you aware that Secretary of State Browning stated
17 publically that he was concerned with the early voting proposal
18 that was put forth by Senator Diaz de la Portilla, because
19 eliminating the first week of early voting would force people
20 to go to early voting during only that remaining shortened
21 period of time?

22 MR. THOMAS: Object to the form of the question.

23 A. I am not aware Secretary Browning's comments in that
24 regard.

25 BY MR. O'CONNOR:

1 Q. Do you have any information with regard to the usage
2 of early voting on the final Sunday before election day?

3 A. No.

4 Q. Do you have an opinion with regard to whether the
5 changes to early voting were needed?

6 A. I don't.

7 Q. So you don't have an opinion one way or the other?

8 A. I don't.

9 Q. Do you have any information with regard to what
10 affect the changes to early voting that were occasioned by
11 House Bill 1355 will have on minorities?

12 A. I don't.

13 Q. Do you have any information as to who drafted the
14 language with regard to the early vote change?

15 A. I don't.

16 Q. We have talked a lot about communications you have
17 had with legislative staff. Did you have any communications
18 with legislators themselves concerning any of the four sets of
19 voting changes?

20 A. No.

21 Q. We have talked about a number of communications you
22 have had with legislative staffers; are there any
23 communications you had with other legislative staffers, beyond
24 those we have discussed today, that you had in connection with
25 House Bill 1355, or the four sets of voting changes?

1 A. I don't think so. I may have had a conversation with
2 one other staffer in the Senate majority office, when Eric
3 Edwards was out of the office.

4 Q. Who is that?

5 A. I believe his name is Tony Cortese, C-o-r-t-e-s-e.

6 Q. Just briefly what did you discuss with Mr. Cortese?

7 A. I don't recall. I am telling you I may have had some
8 conversation with him in general about the election bill.

9 Q. Do you recall if those communications had anything to
10 do with the four sets of changes that we have been discussing?

11 A. I don't recall.

12 Q. Beyond Mr. Cortese, any other discussions with any
13 other staffers?

14 A. May have had some conversations with some of the
15 individuals you have identified on emails, maybe Judy McDonald
16 or Heather Williamson in the House, but I can't think of anyone
17 else.

18 Q. Do you recall the substance of those communications
19 as they regard the four sets of voting changes?

20 A. No. It was general election bill discussion. It
21 wouldn't have been regarding the four changes.

22 Q. We talked about Jenn Ungru before, and how you
23 believed she was at the Governor's office. Did you have any
24 communications with anyone else in the Governor's office
25 concerning the four sets of voting changes?

1 A. I did not.

2 Q. Did you have any communications with either Secretary
3 Browning, or anyone else within the Department of State,
4 concerning the four sets of voting changes?

5 A. No. Probably had a conversation with Pierce
6 Schuessler just about the election bill in general.

7 Q. When you say about the election bill in general, what
8 do you mean by that?

9 A. Probably the plan for passage, that the House bill
10 was going to go over to the Senate and how the Senate was going
11 to amend it, but no specifics.

12 Q. Do you know what role, if any, the Department of
13 State played in connection with House Bill 1355, as regards to
14 the four sets of voting changes we have been discussing?

15 A. I don't know. I don't think they had much a role at
16 all. I wouldn't know.

17 Q. Is that unusual at all that the Department of State
18 wouldn't play much of a role with regard to fairly significant
19 changes to the election code, which were generating a fair
20 amount of interest and controversy?

21 A. I didn't say they didn't have a role. I just wasn't
22 familiar with their role during the process. I believe in this
23 instance they were in a position of reacting to something that
24 had been proposed in the House. But, I don't know if they--
25 they may have been more of a defensive posture, if you will, in

1 talking about provisions of the bill. I don't know how much of
2 the bill was proposed by the House. I don't think they
3 proposed any of the four changes you are discussing.

4 Q. With regard to the four changes we have been talking
5 about, is it your understanding those changes did not come from
6 either the Department of State, or FSASE, or the supervisors?

7 A. I don't think they did.

8 MR. O'CONNOR: Why don't we go off the record.

9 Whereupon, a recess was taken at 3:06.

10 Testimony resumed at 3:13.

11 BY MR. O'CONNOR:

12 Q. Back on the record. Mr. Mitchell, anything occur to
13 you over the break you need to supplement or amend your prior
14 testimony?

15 A. No.

16 Q. With regard to the administrative preclearance
17 process with regard to the four sets of changes, did you have
18 any involvement in that process at all?

19 A. No.

20 Q. Did you have any communications with anyone in regard
21 to that process?

22 A. No.

23 Q. I would like to ask you about the effective date of
24 House Bill 1355. We talked about it a bit this morning. I
25 believe you testified earlier this morning that the effective

1 date you had specified in the draft legislation you prepared
2 was immediately upon the bill becoming law?

3 A. I think so, yes.

4 Q. Do you know whether the House Bill, Senate Bill, had
5 effective dates that were different than effective immediately?

6 A. I don't recall. I don't remember.

7 Q. With regard to elections bills, generally, I think
8 you testified this morning that elections bills, it's not
9 uncommon for them to be effective immediately; is that correct?

10 A. That's correct.

11 Q. That's based on your prior experience in the House?

12 A. Uh huh (Indicating in the affirmative). Yes.

13 Q. I would like to have a take a look at what's
14 previously been marked as Supervisor of Elections Exhibit 21.
15 (Document shown to witness).

16 This is email chain involving Maria Matthews.
17 Are you familiar with Ms. Matthews?

18 A. I know her.

19 Q. Is she an attorney with the Department of State?

20 A. She is.

21 Q. I would like to ask you to take a look at the second
22 page. In an email dated May 24, 2011, from Ms. Matthews, she
23 writes in the first paragraph, "As you know based on the email
24 below HB 1355 became law May 19, 2011. It's already been
25 assigned a Chapter number, 2011-40. Unlike previous elections

1 legislation, there was no prospective three or six month lead
2 time for preclearance. The bill became effective immediately
3 with the exception of a few provisions". Did I read that
4 correctly?

5 A. You did.

6 Q. I'd like to ask you about Ms. Matthews' statement
7 that House Bill 1355 is unlike previous elections legislation,
8 in that it has an effect date immediately upon becoming law.

9 A. I don't know what she is talking about there. I
10 think it's fairly common to either have an effective date
11 immediately, or a July 1 effective date. I don't know what she
12 is referring to with three or six months lead time.

13 Q. Do you think she is just wrong?

14 A. No.

15 Q. Is it just a difference of opinion then? Do you
16 think it's somewhat common, and she thinks this bill is unlike
17 prior election legislation?

18 A. I don't know. I don't know. Unless she is referring
19 to an election year like the 2012, where you would have three
20 months before an election takes place, from the time the bill
21 is passed to the time an election takes place in August or
22 November. I am not sure what she is referring to. I know
23 every bill that makes changes to voter laws has to be
24 precleared, and that usually takes that amount of time.

25 Q. So, given that state-wide election laws have to be

1 precleared with regard to the five covered counties in Florida,
2 is it the case that elections bills will include a period of
3 time prior to a change becoming effective so that preclearance
4 can be pursued?

5 A. No. I think it's common to have them effective upon
6 becoming a law, and they are not enforceable until they are
7 precleared.

8 Q. Help me understand that. A law that has state-wide
9 applicability is not enforceable anywhere in the state until
10 it's precleared?

11 A. I don't know. You have to talk to the Department of
12 State about how they want to handle enforceability.

13 Q. You mentioned that a law that is effective
14 immediately has to wait for preclearance?

15 A. I think that's been the practice of the Department of
16 State, yes, to preclear a bill after it's become effective.

17 Q. That's based on your experience having been a prior
18 attorney working with the Department of State?

19 A. Correct.

20 Q. Just help me understand that more. Is it your
21 experience that if there was a state-wide bill, and it was to
22 become effective immediately, but hadn't yet received
23 preclearance, that it wouldn't go into effect anywhere in the
24 State?

25 A. I don't know. The Department's had different

1 positions on that over the years.

2 Q. What was the position when you were in the
3 Department?

4 A. I believe-- I am trying to recall the year. I
5 believe one year, maybe 1998, the position was the bill would
6 not be enforced, even though it had already reached its
7 effective date, would not be enforced until it was precleared
8 in any county.

9 Q. What was the basis for that conclusion?

10 A. I don't know.

11 Q. Did you play any role in the analysis of that issue?

12 A. No, that was above my pay grade. 15 years ago, 17
13 years ago, whatever.

14 Q. You referenced 1998; is there a reason that year
15 sticks out in your mind?

16 A. No. That was an election year because it was even
17 numbered year. I believe there was an election bill that
18 passed in 1997, and just vaguely recall going through the
19 preclearance process in 1998 for that bill.

20 Q. You said that the decision with regard to when a law
21 would be implemented, whether it was before or after
22 preclearance, was above your pay grade. What did you mean when
23 you said that?

24 A. That was a decision that wasn't mine to make in the
25 Department of State.

1 Q. who made that decision?

2 A. I don't know.

3 Q. I would like to have you take a look at a document
4 previously marked Department of State 28. This is a copy of an
5 opinion prepared by the Division of Elections, it's numbered
6 98-13, and dated August 19, 1998. (Document shown to witness)

7 Have you seen that document before?

8 A. Probably.

9 Q. what is it?

10 A. It's a formal opinion from the Division of Elections.
11 I may have written it.

12 Q. why do you say that? Is that because you were an
13 attorney with the Department of State at that time?

14 A. Yeah.

15 Q. Do you recall working on this issue?

16 A. I don't recall. I could have. I don't recall
17 though.

18 Q. Do you recall the conclusion that was reached in this
19 opinion?

20 A. Not without reading it.

21 Q. Let me direct you to page two. I would like to focus
22 your attention to the third paragraph, the last two sentences.
23 For the record those read, "Application of new election laws
24 are contingent upon preclearance by the Justice Department
25 pursuant to the Voting Rights Act of 1965. Thus the effective

1 date of any such laws are delayed until such preclearance is
2 obtained". Did I read that correctly?

3 A. You did.

4 Q. What is your understanding of that statement of law?

5 A. That they can't be enforced until they were
6 precleared, the provisions of whatever new election law.

7 Q. That was the position of the Department of State?

8 A. Yes.

9 Q. Do you have any recollection of this issue, having
10 now looked at it a little bit more, or this opinion?

11 A. About the opinion, or about the 2011 election bill?

12 Q. I would like to focus on this opinion, the 1998
13 opinion.

14 A. I don't have any opinion about this opinion.

15 Q. I would like to focus again on page two, the last
16 paragraph, the last full sentence, which states, "To do
17 otherwise in our opinion has the potential to cause widespread
18 voter confusion, affect the integrity of the elections process,
19 impair uniform application of the election laws, and violate
20 Federal and State Laws in both the Florida and the United
21 States Constitutions". Did I read that correctly?

22 A. You did.

23 Q. Do you have any reason to disagree with that
24 statement?

25 A. No.

1 Q. Do you think that statement is as true today as it
2 was when it was written in 1998?

3 A. Yes.

4 Q. I would like to ask you to turn to page six. I would
5 like to have you take a look at the fourth paragraph, which
6 begins "the previous law". I'd like to ask you about the last
7 sentence which reads, "Thus if the new provisions of sections
8 14, 16, 20, and 26 are applied in 62 counties, but not in the
9 five covered counties, the state will be applying a double
10 standard with regard to its absentee voting procedures". Did I
11 read that correctly?

12 A. You did.

13 Q. Do you have any reason to disagree with that
14 statement?

15 A. No.

16 Q. Do you believe that statement is as true today as it
17 was in 1998?

18 A. I can't speak to that. I think it's consistent with
19 my earlier testimony that the Department made the decision that
20 it wasn't going to enforce these provisions in any county until
21 this bill was precleared.

22 Q. Do you know whether House Bill 1355 has been
23 implemented in Florida's non-covered counties?

24 A. I think it has.

25 Q. Is that a deviation from the Department of State's

1 prior practice as set-out in this 1998 opinion?

2 MR. THOMAS: Object to the form of the question.

3 A. I don't know if it's a deviation or not.

4 BY MR. O'CONNOR:

5 Q. Well, in 1998 is it correct to state that the
6 Department of State and the Division of Elections concluded
7 that state-wide changes would not go into effect any where
8 until they could go into effect every where in the State?

9 A. That's the conclusion of this opinion, yes.

10 Q. Is it your understanding that that's, in fact, what
11 happened in 1998?

12 A. Yes.

13 Q. With regard to House Bill 1355 in 2011, is it your
14 understanding that the Department of State has implemented the
15 changes occasioned by that bill in the 62 non-covered counties,
16 but has not implemented those changes in the five covered
17 counties?

18 A. That's my understanding.

19 Q. Are those two things different from one another?

20 A. Yes.

21 MR. THOMAS: You mean they changed their opinion?

22 BY MR. O'CONNOR:

23 Q. I would like to have you take a brief look at a
24 document that has been marked Department of State Exhibit 39.
25 This is a memorandum from the Department of State, Office of

1 the General Counsel, by Maria Matthews, December 24, 2007.

2 (Document shown to witness)

3 Have you seen that document before?

4 A. Don't think so.

5 Q. As I recall from your prior testimony, you were
6 working for the Florida government, but not the Department of
7 State in 2007; is that correct?

8 A. I was working for the Florida House in 2007.

9 Q. I would like to ask you about the bolded statement at
10 the end of the first paragraph on the first page, which reads,
11 "Therefore the changes in those four sections relating to voter
12 registration and voting cannot be implemented in any county
13 until DOJ preclears them". Did I read that correctly?

14 A. Uh, which paragraph? Up at the very beginning? I am
15 sorry. I was getting ahead. You did read it correctly, yes.

16 Q. Is that position consistent with the position stated
17 in the 1998 opinion?

18 A. Yes.

19 Q. Mr. Mitchell, let me know when you are done with that
20 document and we can move on.

21 A. Oh, I am sorry.

22 Q. Thank you. One last document I would like to have
23 you take a look at. This has been previously marked as
24 Department of State Exhibit 75. For the record, it is an
25 April 29, 2011 email from Jonathan Fox. (Document shown to

1 witness)

2 Have you seen this email before?

3 A. Give me just a second. I don't know if I have seen
4 this before or not.

5 Q. Okay. I'd like to ask you a little bit about it. I
6 would like to start at the back, with the first email, which
7 appears to be a April 27th email from Gary Holland. Are you
8 familiar with Mr. Holland?

9 A. I am.

10 Q. Is he an attorney at the Department of State?

11 A. He is.

12 Q. Does he appear to be asking a question about what the
13 effective date for Senate Bill 2086 will be?

14 A. It appears he is. He is saying will the effective
15 date of Senate Bill 2086 still be upon its signing into law.

16 Q. Does it appear that, while the header has been cut
17 from this email, based on the way it was forwarded, that this
18 document was sent to Pierce Schuessler?

19 A. I believe so.

20 Q. And, if you look back on to the second page, does
21 that appear to be the beginning of the email that ends on the
22 third page, which is signed by Pierce Schuessler directed to
23 Eric, and lists a few lines of text?

24 A. It looks like it's an email from Eric Edwards and
25 Pierce is responding with some comments there underneath that

1 paragraph two on the back of the first page, page two. So yes
2 I agree with your characterization.

3 Q. That it's an email from Mr. Schuessler to Mr.
4 Edwards?

5 A. It looks like a response from-- yeah. From an email
6 sent by Mr. Edwards to Pierce.

7 Q. At the bottom of page two, it's my understanding that
8 the portion that begins, Eric, that's an email from Mr.
9 Schuessler to Mr. Edwards, which I think was then included in a
10 subsequent email sent along by Mr. Edwards; does that appear to
11 be correct?

12 A. Yes.

13 Q. I would like to ask about the final line on that
14 page, which reads, "As for the rest of the bill, see email
15 below, but July 1, 2011 effective date would be much
16 appreciated". Did I read that correctly?

17 A. You did.

18 Q. Did it appear that Mr. Schuessler is asking Mr.
19 Edwards if Senate Bill 2086 could be made effective July 1,
20 2011?

21 A. Yes.

22 Q. Do you have any information as to why Mr. Schuessler
23 was making that request?

24 A. No.

25 Q. I would like to focus now on the first page of the

1 email, at the very bottom appears to be an email from Eric
2 Edwards to Jonathan Fox, Dan Carlton, with a cc to Dawn
3 Roberts, on April 29, 2011. The subject is final changes for
4 2086. Do you see that?

5 A. Uh huh (Indicating in the affirmative). Yes.

6 Q. I would like to ask you about the comment from
7 Mr. Edwards. He references, "The first change is very
8 important. The second is requested by the Department. I will
9 take your recommendation on the second. Thanks, Eric". Did I
10 read that correctly?

11 A. Yes.

12 Q. Looking on the second page there appear to be two
13 changes, the first is numbered number one and the second is
14 numbered number two, and the language concerning effective date
15 appears to be under number two. Does that appear to be
16 correct?

17 A. Yes.

18 Q. So with regard to Mr. Edwards' statement about the
19 second change being requested by the department, who is your
20 understanding of the department in Mr. Edwards' email?

21 A. The Department of State.

22 Q. Is it your understanding that he is asking for
23 recommendations from Jonathan Fox, with regard to whether the
24 effective date should be made July 1, 2011?

25 A. Yes.

1 Q. I would like to focus on the email immediately above
2 that, from Mr. Fox to Mr. Edwards, with a copy to Dawn Roberts,
3 dated April 29, 2011. Here, again, we have two numbered
4 paragraphs, number one and number two. I would like to focus
5 number two. It concerns effective date. Do you see that?

6 A. Yes.

7 Q. I would like to ask you about the second half of that
8 paragraph which I will read for the record, "But if you want to
9 yield to Pierce's suggestion to change the effective date of
10 the bill from upon becoming law to July 1, 2011, you wouldn't
11 need to make Gary's change. Your call. Just let us know ASAP
12 please. You are the one who was originally adamant about
13 making it effective upon signing into law, remember. Let me
14 know what you want to do with this issue". Did I read that
15 correctly?

16 A. You did.

17 Q. Is your understanding from this that Mr. Fox is
18 stating to Mr. Edwards that Mr. Edwards is the person who was
19 originally "adamant" about making Senate Bill 2086 effective
20 upon signing into law?

21 A. I don't know.

22 Q. Do you have any information about Mr. Edwards'
23 position with regard to when Senate Bill 2086 should become
24 effective?

25 A. I don't.

1 Q. Are you familiar with the American Legislative
2 Exchange Counsel?

3 A. ALEC?

4 Q. Yes.

5 A. Yes.

6 Q. What is your knowledge with regard to ALEC?

7 A. I know it's an educational organization that
8 legislators and legislative staff attend conferences from time
9 to time, and cross pollinate ideas about elections, and various
10 subjects, legislative subjects. I don't know. I never
11 attended a conference.

12 Q. That was going to be my next question.

13 A. No.

14 Q. Have you ever received or reviewed any materials that
15 were provided by ALEC?

16 A. I don't think so. No.

17 Q. Do you know whether any of the individuals associated
18 with the Republican Party of Florida, that were working in
19 connection with the draft changes to the election law, that you
20 prepared in 2011, had any involvement with ALEC?

21 A. I don't know.

22 Q. Do you know whether any of the four sets of voting
23 changes that are at issue in this case had any connection with
24 ALEC?

25 A. I don't know.

1 MR. O'CONNOR: Mr. Mitchell, I don't have any further
2 questions for you at this time. Thank you for your time.

3 MS. MEZA: would you like to take a break or--

4 MR. MITCHELL: No, let's keep going.

5 MS. MEZA: I only have a few questions.

6

7

EXAMINATION BY MS. MEZA:

8 Q. I want to go back to your involvement in the
9 legislative process on behalf of your specific clients;
10 Mr. Palmer, Mr. Terraferma, Mr. Springer are all employees of
11 the Republican Party of Florida, and you are counsel?

12 A. That's correct.

13 Q. And, you, in collaboration with these individuals,
14 drafted a proposed elections bill during the 2011 legislative
15 session. How were your proposals in this bill ultimately
16 incorporated in what was passed as HB1355? It wasn't clear to
17 me whether there was a back and forth, whether you gave someone
18 your proposed bill. How did that process work?

19 A. I think I probably gave the House staff a draft, and
20 I think during my testimony with Mr. O'Connor, it was clear
21 that it became part of the House bill sometime when there was a
22 proposed committee substituted adopted by the House.

23 There was back and forth in terms of kind of
24 comments, and talking points and concerns that were expressed
25 during the process, if that's what you are referring to as far

1 as back and forth goes.

2 Q. In terms of--

3 A. Prepared the draft and submitted it to the House.

4 Q. In terms of the actual drafting of the language, was
5 that initial draft the last time you proposed the language?

6 A. Probably not. I mean, I may have made some changes
7 at the House's request, Florida House's request, in response to
8 supervisors' concerns, but I can't recall specifically.

9 Q. Were there a number of individuals, or one specific
10 individual in the House that you were in contact with, or
11 communication with?

12 A. Probably Glenn Kirkland. He was the point person in
13 the House.

14 Q. In terms of Mr. Rimes, you said he was a political
15 consultant, and also your client. Who was Mr. Rimes' working
16 on behalf of?

17 A. Probably a variety of candidates, just general
18 clients, but he had more of a concern with Chapter 106
19 provisions, campaign finance.

20 Q. Was his level of involvement or the nature of his
21 involvement the same as that of Mr. Palmer or Mr. Terraferma
22 and Mr. Springer?

23 A. No. Not at all.

24 Q. Could you describe the nature of his involvement
25 throughout the process?

1 A. I think he may have given some comments early on,
2 while I was producing the first draft, and after that I don't
3 think he was really too involved at all.

4 Q. You testified that you had been involved in drafting
5 election bills in past legislative sessions, you noted 2010,
6 2009 and 2008; is that correct?

7 A. Yes.

8 Q. Was that in your capacity as general counsel of the
9 Republican Party, or--

10 A. No. That was in my capacity as staff director for
11 the House Ethics and Elections Committee.

12 Q. The way your involvement in the draft-- well, strike
13 that.

14 One of the documents we looked at, and you
15 testified that Jenn Ungru, of the Governor's office, at some
16 point provided input; did anyone else, other than the
17 individuals you were working with, Mr. Palmer, Mr. Terraferma,
18 and so forth, provide input?

19 MR. THOMAS: Object to the form of the question.

20 Misstates prior testimony. I think he testified Ms. Ungru
21 did not provide any input. He never got in touch with
22 her.

23 BY MS. MEZA:

24 Q. Did anyone else provide input?

25 A. No.

1 Q. So, outside of those four individuals, Palmer,
2 Terraferma, Springer, Rimes, no one else provided input into
3 the proposed draft you prepared?

4 A. That's correct.

5 Q. To your knowledge, was the draft bill you prepared
6 including changes to the third-party voter registration
7 provisions the first instance these changes were proposed?

8 A. In preparation for that legislative session, the
9 first time they were proposed?

10 Q. Yes. The specific changes to the third-party voter
11 registration provisions, was your draft the first, to your
12 knowledge, was your draft the first time those changes were
13 proposed?

14 A. That's the only draft I am aware of. There may have
15 been others, but I don't know.

16 Q. Did your discussions with Mr. Palmer and others
17 regarding these changes to third-party voter registration
18 provisions did they include any discussions regarding previous
19 changes to these provisions?

20 MR. THOMAS: Objection; privileged.

21 BY MS. MEZA:

22 Q. Did your drafting of the changes to third-party voter
23 registration provisions include any consideration of previous
24 changes to these provisions?

25 A. No, ma'am.

1 Q. To your knowledge, was your proposal regarding
2 changes to election day changes of address the first time in
3 the 2011 legislative session that a change to this provision
4 was proposed?

5 A. I think so, but there could have been other drafts
6 offered by other members. I don't know. I say House members.

7 Q. I just want to refer back to Exhibit 13. This was
8 your response, as well as that of Mr. Palmer and Terraferma's
9 response to concerns raised by supervisors of elections. If we
10 can go back to section 21, where you suggested that we should
11 try and come up with at least some anecdotal evidence that
12 there was abuse or double voting. Do you recall if that was
13 ever done? Did you come up with that evidence?

14 A. I didn't. That was my discussion to House staff.

15 Q. Do you recall if they actually came up with that
16 evidence?

17 A. I don't know.

18 Q. At this point, was the examples or the possible
19 examples you cited in Leon County with some FAMU students, was
20 that the only possible instance of abuse or double voting you
21 had heard of?

22 A. That's the only one I was aware of that I think I had
23 read about, yeah.

24 Q. Do you recall where you read about it?

25 A. I don't. It may have been in the local newspaper.

1 The Tallahassee Democrat, or one of the news blogs.

2 Q. Was there any reason you thought an example
3 concerning FAMU students would be more compelling than any
4 other anecdotal evidence?

5 A. No, ma'am. That was just the one I was aware of.

6 Q. I would like to refer back to what was marked as
7 Exhibit 6. Just to go back down to your statement regarding
8 early voting. You state, "I think if the supervisors of
9 elections had some additional flexibility with early voting
10 sites they could easily be sold on a shortened time frame". At
11 any point did you, or anyone else, propose that you eliminate
12 the change to early voting that was being proposed, instead of
13 trying to negotiate an additional change?

14 A. No, ma'am.

15 Q. Why not?

16 A. The early voting is a recurring theme with election
17 bills for the last several years. As I mentioned to Dan, in my
18 previous testimony, the supervisors for several years have
19 wanted additional flexibility with regard to where they select
20 their early voting sites, and I was simply throwing that out as
21 a consideration that if they were given some flexibility with
22 their sites, you could shorten the time frame and it might ease
23 up on their concerns.

24 Q. But for other provisions you had suggested just
25 eliminating them all together. Why didn't you suggest just not

1 including the proposed early voting change?

2 A. In the House bill?

3 Q. Yes.

4 A. Again, I didn't really-- didn't have a thought about
5 early voting, and quite frankly, it's a controversial issue,
6 and I didn't want to involve it in the election bill. Didn't
7 want to change it, at least in the House side.

8 Q. Was that just your personal decision, or was there
9 discussions that you should not propose to eliminate the early
10 voting provision?

11 A. I didn't have any discussion with the House about
12 early voting, changing it.

13 MS. MEZA: Those are all of the questions I had.
14 Thank you so much.

15 MR. NORDBY: Can we go off the record.

16 whereupon, a brief recess was taken.

17

18 EXAMINATION BY MR. NORDBY:

19 Q. Thank you, Mr. Mitchell, for your time here today. I
20 have a few follow-up questions, and I may bounce around between
21 a few of the topics you have covered over the course of the
22 past several hours, so if you need any clarification as to what
23 I am talking about, please feel free to ask me.

24 You testified at length this morning about the
25 process that you use to pull together a draft elections bill,

1 and send it over to the Florida House. Do you recall that
2 testimony?

3 A. Yes.

4 Q. Is it fair to characterize that as that these were
5 proposals from you, and some of your clients, to the
6 legislature?

7 A. Yes.

8 Q. Is that process that you described this morning
9 uncommon in the Florida legislative process?

10 A. I don't think so.

11 Q. What do you base that on?

12 A. Experience I guess as an employee of the House, and
13 what I had done in prior years in this capacity with the Coates
14 Law Firm.

15 Q. So when you were an employee of the Florida House,
16 did you witness outside lobbyist, or interest groups, provide
17 draft language to the legislature for its considering?

18 A. All the time.

19 Q. That's not uncommon?

20 A. It's not uncommon.

21 Q. Is that something you had done before the 2011
22 legislative session as an outside attorney?

23 A. Yes.

24 Q. Were all of the changes that you proposed accepted
25 and incorporated into the bill as proposed?

1 A. No, I don't think they were.

2 Q. In fact, if you go through a few of them, the
3 third-party voter registration change that you had originally
4 proposed was changed in a few ways, from proposal to ultimate
5 enactment; was it not?

6 A. It was.

7 Q. And, the address change provision as proposed by you
8 was that changed before ultimate enactment?

9 A. It was.

10 Q. The early voting change was not something that had
11 come from you; is that correct?

12 A. That's correct.

13 Q. What about the constitutional initiative change?

14 A. Like I said, I believe somewhere in the process there
15 was a constitutional amendment bill floating around that made
16 its way into the Senate bill, I believe. I think I had the
17 shelf life provision in our original draft, from four to two
18 years, but again that was something we had put in the election
19 bill for the last four to six years.

20 Q. Is that back and forward between House and Senate
21 typical of Florida's legislative process?

22 A. Absolutely.

23 Q. I am going to ask you about something that you
24 discussed in connection with Exhibit 6, earlier with
25 Mr. O'Connor. There is a reference in this email that you

1 wrote to affiliated/leadership committees. Can you explain
2 what an affiliated party committees is, in the context of
3 Florida's campaign finance law?

4 A. I will do my best. An affiliated party committee is
5 a committee within a political party. They are dedicated to
6 electing members of the House, or members of the Senate. As I
7 explained earlier, they are typically in both the major
8 parties. There are individuals that are responsible for
9 electing House candidates and Senate candidates, and up until
10 the adoption, many affiliated party committees, any money that
11 would go to the political parties was put in one big pot of
12 money.

13 Q. Have any affiliated party committees been established
14 under the statute that would allow for their creation?

15 A. Not to my knowledge.

16 Q. What are you referring to in this email about what
17 will be done with affiliated/leadership committees?

18 A. I believe at this point, this is February 2011, there
19 had been an affiliated party committee bill that had been
20 vetoed, and I guess I was throwing that out for consideration
21 as to whether that language that had been vetoed was going to
22 be included in the election bill, or if it was going to be a
23 stand-alone bill, a separate issue bill.

24 Q. Does that discussion have anything to do at all with
25 the four changes?

1 A. It does not.

2 Q. I would ask you to turn to Exhibit 11, as previously
3 marked. I will ask you to look at section 21. Does section 21
4 refer to the change of address provision that was enacted in
5 House Bill 1355?

6 A. That's correct.

7 Q. The first line of this summary from the FSASE states,
8 "This removes the ability of a voter to change their address or
9 name at the polling place. This will result in tens of
10 thousands of additional provisional ballots". Do you know what
11 the basis for that statement of tens of thousands of
12 provisional ballots was?

13 A. I don't have a clue, no.

14 Q. I asked you a couple of questions about the
15 legislative process in Florida. Based on your time as a
16 staffer for the Florida House, and as an attorney outside
17 participating in the process, did anything strike you as
18 unusual about the method in which 1355 was introduced, and
19 enacted?

20 A. No.

21 Q. How common is the use of a strike-all amendment as
22 part of the committee process?

23 A. It's very common. It happens probably with the
24 majority of legislation that's passed.

25 Q. What about proposed committee substitutes to bills?

1 A. Those are fairly common, too. More particularly in
2 the Senate, but they are common in the House.

3 Q. How common is it in the course of a committee meeting
4 for a member to call for a time certain vote?

5 A. That's fairly common.

6 Q. I want to ask you now about the Florida Voter
7 Registration System. I believe you testified that you are
8 generally familiar with the system; is that correct?

9 A. I am.

10 Q. Do you know whether the voter history information
11 that is included in the Florida Voter Registration System is
12 updated in real-time over the course of election day?

13 A. I think it's hoped one day that it will be, but I
14 don't believe it is.

15 Q. So are you aware of any process under the prior
16 version of the change of address law whereby a supervisor of
17 elections in one county could verify whether someone had voted
18 in their prior county before arriving at the precinct in the
19 new county?

20 A. I am not aware of a process, no.

21 Q. Does the new law's provision for provisional ballots
22 help to address any concerns with regard to that change?

23 A. I believe it's an attempt to do so, yes.

24 Q. Other than the early voting change, is it fair to say
25 that you were fairly involved in at least the initial draft of

1 three of these four provisions?

2 A. Yes, just with the initial draft.

3 Q. Do you have any reason to believe that the changes
4 made to the constitutional initiative petition provision were
5 made for a racially discriminatory purpose?

6 A. No.

7 Q. Do you have any reason to believe that the changes to
8 the change of address provision were made for a racially
9 discriminatory purpose?

10 A. No.

11 Q. Do you have any reason to believe that the changes to
12 the third-party voter registration organization statute were
13 made for a racially discriminatory purpose?

14 A. No.

15 Q. Though you weren't involved with the initial purpose,
16 through the course of your discussions with Senate staff, and
17 others, do you have any reason to believe the changes to the
18 early voting provisions were made for a racially discriminatory
19 purpose?

20 A. No.

21 MR. NORDBY: No further questions.

22 MR. O'CONNOR: Mr. Mitchell, I have no further
23 questions either.

24 whereupon, the deposition concluded at
25 3:59.

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REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF LEON

I, LISA C. SNYDER, Court Reporter, certify that I was authorized to and did stenographically report the deposition of BUCKY MITCHELL; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 8th day of March, 2012.

/s/_____

Lisa C. Snyder
Court Reporter/Notary Public

LISA C. SNYDER, COURT REPORTER

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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF LEON

I, the undersigned authority, certify that BUCKY MITCHELL personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 8th day of March, 2012.

/s/_____
Lisa C. Snyder
Court Reporter/Notary Public
COMMISSION EXPIRES: 3-31-2014
COMMISSION NUMBER: DD943683

LISA C. SNYDER, COURT REPORTER